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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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-00000-C-94-165

**RESPONSES TO WRITTEN COMMENTS REGARDING PROPOSED RETAIL  
ELECTRIC COMPETITION RULES (R-14-2-1601 ET SEQ.) BY OTHER PARTIES  
SUBMITTED BY ASARCO INCORPORATED,  
CYPRUS CLIMAX METALS COMPANY, ENRON CORP. AND  
ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION**

October 2, 1998

Submitted by:  
FENNEMORE CRAIG  
Attorneys for ASARCO Incorporated, Cyprus  
Climax Metals Company, Enron Corp., and  
Arizonans for Electric Choice and  
Competition

1 Pursuant to the August 11, 1998 Procedural Order in this docket, ASARCO, Incorporated,  
2 Cyprus Climax Metals Company, Enron Corp., and Arizonans for Electric Choice and Competition  
3 (collectively referred to herein as the "AECC"), hereby submit their Responses to Written  
4 Comments on the Proposed Retail Electric Competition Rules (R-14-2-1601, et. seq.) (the "Rules")  
5 filed by certain of the other parties in this proceeding. AECC has previously filed written  
6 comments regarding the Rules and these prior filings are adopted herein by this reference. See  
7 AECC Written Comments dated July 6, 1998, August 4, 1998 and September 18, 1998; Enron  
8 Written Comments dated July 2, 1998. At this time, AECC offers the following additional  
9 comments regarding the Rules.<sup>1</sup>

10 **I. INTRODUCTION.**

11 Following months of discussions with the Affected Utilities and consumers, the  
12 Commission Staff proposed significant revisions to the Rules. These proposed revisions resulted in  
13 the Commission's adoption of the Rules in their current form as an emergency measure on August  
14 10, 1998. See Decision No. 61071 (August 10, 1998). Thereafter, a Procedural Order was issued  
15 providing an opportunity for interested parties to submit additional written comments on the Rules  
16 by September 18, 1998.

17 Several of the Affected Utilities (APS, TEP and Citizens) have taken this opportunity to  
18 reassert arguments regarding the Rules already heard and rejected by the Commission. The reasons  
19 for rejecting the Affected Utilities' arguments have not changed. These Affected Utilities are  
20 seeking to modify the Rules in ways which benefit the utilities at the expense of consumers. The  
21 Affected Utilities' proposals will cripple competition for electric power in Arizona and must be  
22 rejected.

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26 <sup>1</sup> All references are according to the current rules as adopted by the Commission in Decision No. 61071.

1 **II. METERING AND BILLING.**

2 The Rules prohibit an Affected Utility from providing competitive services as defined in the  
3 Rules except as authorized by the Rules. R14-2-1616.B. This is consistent with the market  
4 structure determined by this Commission to be appropriate for electric power generation in  
5 Arizona—full retail access to a competitive market. If an Affected utility wants to participate in the  
6 competitive marketplace, it must set up an affiliate to provide competitive services such as metering  
7 and billing.

8 APS seeks to modify the Rules so that it will be permitted to provide all of the competitive  
9 services identified in R14-2-1606.D in its distribution area. APS complains that requiring the  
10 formation of affiliates to provide these services in its distribution area will impair competition by  
11 making it more expensive for consumers to take advantage of competitive generation. To some  
12 extent, APS may be correct. However, the additional costs of requiring Affected Utilities who want  
13 to provide competitive generation services to form an affiliate pale in comparison to the benefits to  
14 consumers of requiring corporate separation of these services. For one thing, consumer confusion  
15 will result if some services are provided by the competitive side of an Affected Utility while other  
16 services are provided by the regulated or monopoly side of the same utility. Furthermore, under the  
17 APS' scenario, the risk of cross-subsidization of revenue and information to the competitive side of  
18 the Affected Utility from its monopoly side is simply too extreme.

19 By requiring that competitive services be provided by an affiliate, the Commission has  
20 eliminated this inherent confusion and minimized the risks of cross-subsidization, benefits that far  
21 outweigh the possibility of minor additional costs to consumers seeking to obtain the benefits of  
22 competition. Accordingly, APS' proposed changes to R14-2-1616.B must be rejected.

23 **III. AFFILIATED TRANSACTION RULES.**

24 APS, TEP and Citizens each complain about R14-2-1617 which contains significant  
25 provisions directed at preserving the separation between Affected Utilities and their affiliates. That  
26 the Affected Utilities' seek to evade these important restrictions illustrates the need for such

1 limitations. The strict codes of conduct governing affiliate transactions are designed, among other  
2 things, to eliminate cross-subsidization of competitive services with revenues generated from the  
3 provision of non-competitive services and to prevent discrimination in access to information by  
4 new market entrants. Without these limits on affiliate transactions, consumers and the Commission  
5 face considerable risk that Affected Utilities, acting in concert with their affiliates, will take actions  
6 that disadvantage competitive energy providers and, therefore, hamper competition.

7 APS asserts that the affiliate transaction rules should apply equally to both in-state and out-  
8 of-state ESPs. This is nonsense. As discussed above, the purpose of these rules is to provide a  
9 level playing field for competition in Arizona by eliminating the inherent risks that would exist  
10 without complete separation. These risks exist where an in-state monopoly providing non-  
11 competitive services is indistinguishable from an in-state entity providing competitive services to  
12 the same base of consumers. There is no such risk, and APS does not even try to identify such a  
13 risk, where an out-of-state ESP with affiliates in other states seeks to compete in Arizona. At best,  
14 APS is merely engaging in a tit-for-tat approach to deregulation. At worst, APS' proposal seeks to  
15 further constrain the introduction of competitive generation suppliers into the State. In either case,  
16 APS' proposal must be rejected.

17 **IV. SELF-GENERATION.**

18 TEP urges the Commission to eliminate the self-generation exclusion to stranded cost  
19 recovery contained in the Rules at R14-2-1607.F. By exempting self-generators from stranded  
20 cost recovery, TEP argues, the Commission is creating an incentive for consumers to avoid  
21 stranded cost recovery by choosing to self-generate. Affected Utilities have always faced the risk  
22 that a customer for whom the utility has planned generation capacity could leave the system opting  
23 instead to self-generate. Thus, R14-2-1607.F merely ensures that this previously held and  
24 important consumer right is preserved following the introduction of competition.

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1 **V. TRANSMISSION AND DISTRIBUTION ACCESS.**

2 Citizens urges the Commission to provide priority access to firm transmission resources to  
3 Standard Offer customers. As Citizens itself points out, this argument has already been made to the  
4 Commission. Appropriately, the Commission rejected Citizens' recommendation, when, in  
5 harmony with the Arizona Legislature, it ensured non-discriminatory access to transmission  
6 capacity. See A.R.S. § 30-805.E. In fact, the Committed Users Working Group, in which  
7 Commission Staff are participating, has already developed a basic protocol for the pro-rata  
8 allocation of transmission access.

9 Frankly, Citizens' arguments in favor of priority access illustrate the importance of  
10 separating transmission and distribution from generation through divestiture. Obviously, Citizens  
11 would not be recommending discriminatory access if its generation entity would also face limited  
12 access. In any event, non-discriminatory access to transmission capacity is essential to competition.  
13 If consumers are penalized with inferior transmission access for selecting a competitive ESP, there  
14 will be a significant disincentive to choosing competition.

15 In its comments, TEP again proposes that R14-2-1610 be reconciled with FERC Orders 888  
16 and 889. Commission Staff has already struck this language from the Rules as unnecessary. The  
17 addition of this language adds nothing to the Rules except the possibility of confusion.

18 **VI. STRANDED COST ISSUES.**

19 AECC supports RUCO's recommendation that the Commission amend R14-2-1601.39 to  
20 clarify that stranded cost recovery is limited to assets and obligations secured by an Affected Utility  
21 prior to December 26, 1996, the date the Rules were originally adopted.

22 In addition, AECC urges the Commission to reject TEP's efforts to undermine its obligation  
23 to mitigate stranded costs. By suggesting that the Commission eliminate the provision requiring  
24 Affected Utilities to mitigate stranded costs with profits realized from the "expanding wholesale or  
25 retail markets" or from offering a "wider scope of services," TEP seeks to do away with the most  
26 viable, if not the only viable, means of mitigation available. This is not only imprudent, it is

1 inequitable. To the extent Affected Utilities are able to expand into new markets using assets paid  
2 for by consumers, consumers are certainly entitled to share in the benefits realized by having their  
3 stranded cost burden reduced.

4 **VII. SOLAR PORTFOLIO.**

5 In its comments, APS points out that the solar portfolio cost cap was, apparently,  
6 inadvertently deleted from the Rules. AECC agrees with APS that this "cost impact cap" is a  
7 necessary consumer protection that should be included in the Rules.

8 **VIII. COMPETITIVE PHASING.**

9 RUCO requests that the Commission amend R14-2-1604.B.1 to provide that a minimum  
10 of 10% of residential customers shall have access to competitive electric services on January 1,  
11 1999. In addition, RUCO requests that the Rules provide for a residential phase-in program that  
12 increases residential customers' access to competition by 5% every 6 months until January 1,  
13 2001. First, it is entirely unrealistic to expect that this many residential customers will seek  
14 access to competitive generation services in the near future. In fact, as reflected by comments  
15 made by the Salt River Project in the Arizona Republic on Friday, October 2, 1998, it is entirely  
16 possible that none of the Affected Utilities' residential customers will seek retail access  
17 following the initiation of competition on January 1, 1999. Second, in the event the Commission  
18 chooses to modify R14-2-1604 to increase the number of residential customers that will have  
19 access to competition, the Commission must also preclude Affected Utilities from reserving such  
20 capacity in the event it is not utilized to serve residential customers choosing competition.  
21 Instead, this capacity should be made available on a pro-rata basis to non-residential customers  
22 qualifying for full retail access consistent with the Rules.

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26

RESPECTFULLY SUBMITTED this 2nd day of October, 1998.

FENNEMORE CRAIG, P.C.

By 

C. Webb Crockett  
Jay Shapiro  
Suite 2600  
3003 North Central Avenue  
Phoenix, Arizona 85012  
Attorneys for ASARCO Incorporated,  
Cyprus Climax Metals Company, Enron Corp. and  
Arizonans for Electric Choice and Competition

1 ORIGINAL AND TEN COPIES  
of the foregoing hand-delivered  
2 this 2nd day of October, 1998, to:

3 Arizona Corporation Commission  
Docket Control  
4 1200 West Washington Street  
Phoenix, Arizona 85007

5 TWO COPIES OF THE FOREGOING  
6 hand-delivered this 2nd day  
of October, 1998 to:

7 Jerry Rudibaugh, Chief Hearing Officer  
8 Hearing Division  
Arizona Corporation Commission  
9 1200 West Washington  
Phoenix, Arizona 85007

10 COPY OF THE FOREGOING  
11 hand-delivered this 2nd day  
of October, 1998 to:

12 Jim Irvin  
13 Commissioner - Chairman  
Arizona Corporation Commission  
14 1200 West Washington  
Phoenix, Arizona 85007

15 Renz D. Jennings  
16 Commissioner  
Arizona Corporation Commission  
17 1200 West Washington  
Phoenix, Arizona 85007

18 Carl J. Kunasek  
19 Commissioner  
Arizona Corporation Commission  
20 1200 West Washington  
Phoenix, Arizona 85007

21 Ray Williamson, Acting Director  
Utilities Division  
22 Arizona Corporation Commission  
1200 West Washington  
23 Phoenix, Arizona 85007

24 Paul Bullis, Chief Counsel  
Legal Division  
25 Arizona Corporation Commission  
1200 West Washington  
26 Phoenix, Arizona 85007

1 COPY OF THE FOREGOING  
mailed this 2nd day of October, 1998 to:

2

3 Barbara Klemstine  
Manager, Regulatory Affairs  
ARIZONA PUBLIC SERVICE CO.  
P.O. Box 53999, M.S. 9909  
4 Phoenix, Arizona 85072-3999

4

5

6 Greg Patterson  
RUCO  
2828 N. Central Ave., Suite 1200  
Phoenix, AZ 85004

6

7

8 Rick Gilliam  
LAND AND WATER FUND OF THE ROCKIES  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

8

9

10 Charles R. Huggins  
ARIZONA STATE AFL-CIO  
110 North 5th Avenue  
P.O. Box 13488  
Phoenix, Arizona 85002

10

11

12 David C. Kennedy  
LAW OFFICES OF DAVID C. KENNEDY  
100 West Clarendon Avenue  
Suite 200  
13 Phoenix, Arizona 85012-3525

13

14

15 Norman J. Furuta  
DEPARTMENT OF THE NAVY  
900 Commodore Drive, Building 107  
P.O. Box 272 (Attn. Code 90C)  
San Bruno, California 94066-0720

15

16

17 Thomas C. Horne  
Michael S. Dulberg  
HORNE, KAPLAN & BRISTROW, P.C.  
40 North Central Avenue  
Suite 2800  
18 Phoenix, Arizona 85004

18

19

20 Rick Lavis  
ARIZONA COTTON GROWERS ASSOCIATION  
4139 East Broadway Road  
Phoenix, Arizona 85040

20

21

22 Steve Brittle  
DON'T WASTE ARIZONA, INC.  
6205 South 12th Street  
Phoenix, Arizona 85040

22

23

24 Karen Glennon  
19037 N. 44th Avenue  
Glendale, Arizona 85308

24

25

26

Michael A. Curtis  
MARTINEZ & CURTIS, P.C.  
2712 North 7th Street  
Phoenix, Arizona 85006  
Attorneys for Arizona Municipal Power Users' Association

Walter W. Meek, President  
ARIZONA UTILITY INVESTORS ASSOCIATION  
2100 N. Central Avenue  
Suite 210  
Phoenix, Arizona 85004

Barbara S. Bush  
COALITION FOR RESPONSIBLE ENERGY EDUCATION  
315 West Riviera Drive  
Tempe, Arizona 85282

COLUMBUS ELECTRIC COOPERATIVE, INC.  
P.O. Box 631  
Deming, New Mexico 88031

CONTINENTAL DIVIDE ELECTRIC COOPERATIVE  
P.O. Box 1087  
Grants, New Mexico 87020

DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION  
CR Box 95  
Beryl, Utah 84714

GARKANE POWER ASSOCIATION, INC.  
P.O. Box 790  
Richfield, Utah 84701

Stephen Ahearn  
ARIZONA DEPT OF COMMERCE  
ENERGY OFFICE  
3800 North Central Avenue, 12th Floor  
Phoenix, Arizona 85012

Betty Pruitt  
ARIZONA COMMUNITY ACTION ASSN.  
202 E MCDOWELL RD STE 255  
Phoenix, Arizona 85004-4535

Bradley Carroll  
TUCSON ELECTRIC POWER CO.  
P.O. Box 711  
Tucson, Arizona 85702

1	A.B. Beardson NORDIC POWER 4281 N. Summerset Tucson, Arizona 85715	Nancy Russell ARIZONA ASSOCIATION OF INDUSTRIES 2025 N. 3rd Street, Suite 175 Phoenix, Arizona 85004
2		
3	Michael Rowley c/o CALPINE POWER SERVICES 50 West San Fernando, Suite 550 San Jose, California 95113	Craig Marks CITIZENS UTILITIES COMPANY 2901 N. Central Avenue Suite 1660 Phoenix, Arizona 85012
4		
5	Dan Neidlinger 3020 N. 17th Drive Phoenix, Arizona 85015	Thomas Pickrell Arizona School Board Association 2100 North Central Avenue Phoenix, Arizona 85004
6		
7	Jessica Youle PAB300 SALT RIVER PROJECT P.O. Box 53025 Phoenix, Arizona 85072-2025	Jack Shilling DUNCAN VALLEY ELECTRIC COOPERATIVE P.O. Box 440 Duncan, Arizona 85534
8		
9	Clifford Cauthen GRAHAM COUNTY ELECTRIC CO-OP P.O. Box Drawer B Pima, AZ 85543	Barry Huddleston DESTEC ENERGY P.O. Box 4411 Houston, Texas 77210-4411
10		
11	Michelle Ahlmer ARIZONA RETAILERS ASSOCIATION 137 E University Mesa, Arizona 85201	Steve Montgomery JOHNSON CONTROLS 2032 West 4th Street Tempe, Arizona 85281
12		
13	Joe Eichelberger MAGMA COPPER COMPANY P.O. Box 37 Superior, Arizona 85273	Terry Ross CENTER FOR ENERGY AND ECONOMIC DEVELOPMENT 7853 E. Arapahoe Court, Suite 2600 Englewood, Colorado 80112
14		
15	Douglas Mitchell SAN DIEGO GAS AND ELECTRIC CO. P.O. Box 1831 San Diego, California 92112	Ken Saline Jeff Wroner K.R. SALINE & ASSOCIATES Consulting Engineers 160 N. Pasadena, Suite 101 Mesa, Arizona 85201-6764
16		
17		
18	Sheryl Johnson TEXAS-NEW MEXICO POWER CO. 4100 International Plaza Fort Worth, Texas 76109	Louis A. Stahl STREICH LANG 2 North Central Avenue Phoenix, Arizona 85004
19		
20	Ellen Corkhill AARP 5606 North 17th Street Phoenix, Arizona 85016	Robert Julian PPG 1500 Merrell Lane Belgrade, Montana 59714
21		
22	Phyllis Rowe ARIZONA CONSUMERS COUNCIL 6841 N. 15 <sup>th</sup> Place Phoenix, Arizona 85014	Department of Navy Naval Facilities Engineering Command Navy Rate Intervention 901 M. Street SE Building 212 Washington, D.C. 20374 Attn: Sam DeFraw
23		
24		
25	Andrew Gregorich BHP COPPER P.O. Box M San Manuel, Arizona 85631	Robert S. Lynch 340 E. Palm Lane, Suite 140 Phoenix, Arizona 85004-4529
26		

- |    |   |   |
|----|---|---|
| 1  | Larry McGraw<br>USDA-RUS<br>6266 Weeping Willow<br>Rio Rancho, New Mexico 87124   | Douglas A. Oglesby<br>Vantus Energy Corporation<br>353 Sacramento Street, Suite 1900<br>San Francisco, California 94111   |
| 2  |   |   |
| 3  | Jim Driscoll<br>ARIZONA CITIZEN ACTION<br>2430 S. Mill, Suite 237<br>Tempe, Arizona 85282   | Michael K. Block, President<br>GOLDWATER INSTITUTE<br>Bank One Center<br>201 North Central<br>Concourse Level<br>Phoenix, Arizona 85004   |
| 4  |   |   |
| 5  |   |   |
| 6  | William Baker<br>ELECTRICAL DISTRICT NO. 6<br>P.O. Box 16450<br>Phoenix, Arizona 85011  | Carl Robert Aron<br>Executive Vice President and COO<br>ITRON, INC.<br>2818 N. Sullivan Road<br>Spokane, Washington 99216   |
| 7  |   |   |
| 8  |   |   |
| 9  | John Jay List<br>General Counsel<br>NATIONAL RURAL UTILITIES<br>COOPERATIVE FINANCE CORP<br>2201 Cooperative Way<br>Herndon, Virginia 21071                     | Doug Nelson<br>DOUGLAS C. NELSON, P.C.<br>7000 North 16 <sup>th</sup> Street, Suite 120-307<br>Phoenix, Arizona 85020   |
| 10 |   |   |
| 11 | Wallace Tillman<br>Chief Counsel<br>NATIONAL RURAL ELECTRIC<br>COOPERATIVE ASSOCIATION<br>4301 Wilson Blvd.<br>Arlington, Virginia 22203-1860                   | William Sullivan<br>MARTINEZ & CURTIS, P.C.<br>2716 North 7 <sup>th</sup> Street<br>Phoenix, Arizona 85006<br>Attorneys for Mohave Electric Cooperative and<br>Navopache Electric Cooperative |
| 12 |   |   |
| 13 |   |   |
| 14 | Lawrence V. Robertson, Jr.<br>Munger Chadwick, PLC<br>333 North Wilmot, Suite 300<br>Tucson, Arizona 85711-2634<br>Attorney for PGE Energy                      | Elizabeth S. Firkins<br>INTERNATIONAL BROTHERHOOD OF<br>ELECTRICAL WORKERS, L.U. #1116<br>750 South Tucson Blvd.<br>Tucson, Arizona 85716-5698  |
| 15 |   |   |
| 16 | Tom Broderick<br>6900 E. Camelback Road, #800<br>Scottsdale, Arizona 85251  | Barbara R. Goldberg<br>Deputy City Attorney<br>CITY OF SCOTTSDALE<br>3939 Civic Center Blvd.<br>Scottsdale, Arizona 85251   |
| 17 |   |   |
| 18 |   |   |
| 19 | Albert Sterman<br>ARIZONA CONSUMERS COUNCIL<br>2849 East 8 <sup>th</sup> Street<br>Tucson, Arizona 85716  | Carl W. Dabelstein<br>2211 E. Edna Avenue<br>Phoenix, Arizona 85022   |
| 20 |   |   |
| 21 | Michael Grant<br>GALLAGHER & KENNEDY<br>2600 North Central Avenue<br>Phoenix, Arizona 85004<br>Attorneys for AEPCO  | Larry K. Udall<br>ARIZONA MUNICIPAL POWER USERS ASSN.<br>2712 N. 7 <sup>th</sup> Street<br>Phoenix, Arizona 85006-1090  |
| 22 |   |   |
| 23 | Suzanne M. Dallimore<br>Antitrust Unit Chief<br>Arizona Attorney General<br>Department of Law Building<br>1275 West Washington Street<br>Phoenix, Arizona 85007 | Roderick G. McDougall<br>City Attorney<br>Attn: Jesse Sears, Asst. Chief Counsel<br>200 West Washington Street, Suite 1300<br>Phoenix, Arizona 85003-1611                                     |
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23  
24  
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26

Andrew W. Bettwy  
Debra Jacobson  
SOUTHWEST GAS CORPORATION  
5241 Spring Mountain Road  
Las Vegas, Nevada 89102

William J. Murphy  
200 West Washington Street, Suite 1400  
Phoenix, Arizona 85003-1611

Vincent Hunt  
CITY OF TUCSON, DEPT. OF OPERATIONS  
4004 S. Park Avenue  
Bldg. 2  
Tucson, Arizona 85714-0000

Russell E. Jones  
33 N. Stone Avenue, Suite 2100  
P.O. Box 2268  
Tucson, Arizona 85702  
Attorneys for Trico Electric Cooperative, Inc.

Steve Wheeler and Thomas M. Mumaw  
SNELL & WILMER  
One Arizona Center  
400 East Van Buren Street  
Phoenix, Arizona 85004-0001  
Attorneys for APS

Christopher Hitchcock  
P.O. Box 87  
Bisbee, Arizona 85603-0087  
Attorneys for Sulphur Springs Valley  
Electric Cooperative, Inc.

Myron L. Scott  
1628 E. Southern Avenue, No. 9-328  
Tempe, Arizona 85282-2179  
Attorneys for a Better Environment

Peter Glaser  
DOHERTY RUMBLE & BUTLER PA  
1401 New York Avenue, N.W., Suite 1100  
Washington, DC 20005

By: 