

Arizona Corporation Commission
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GRANT WOODS
ATTORNEY GENERAL



STATE OF ARIZONA

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AZ CORP COMMISSION

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October 2, 1998

RE-60000C-94-0165

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

Re: Retail Electric Competition Rules, Comments

Dear Mr. Williamson:

The Attorney General has the following comments to the comments submitted by various other parties to the Emergency Retail Competition Rules as follows:

APS Comments: The Attorney General agrees that there is confusion in the rules regarding whether the incumbents can provide metering services. We do not propose that incumbents be prohibited from providing metering so long as the incumbent does not abuse its retail monopoly market power to make it more difficult for customers to change metering companies. Standards for metering and billing should be supplier-neutral but should not force customers either to stay with incumbants or switch.

When an ESP has market power in a relevant product or geographic market, affiliate transactions can become problematic and anticompetitive. However, the Attorney General does not agree that the affiliate rules should apply to non-incumbents and new entrants *per se*, unless and until a new entrant develops market power within Arizona or market power that negatively affects Arizona. As a practical matter, in the current Arizona market no non-incumbent has market power and if the non-incumbant company does not have market power, then it is unnecessary to regulate how its books are kept. The Attorney General believes that proper antitrust enforcement renders many of the affiliate rules moot.

Mr. Ray Williamson
October 2, 1998
Page 2

AEPCO comments: The Attorney General objects to any interpretation or change in rules that would give incumbents more discretion as to the operation of must-run units. This determination should be made on system-wide reliability bases, and not be discretionary to the operator.

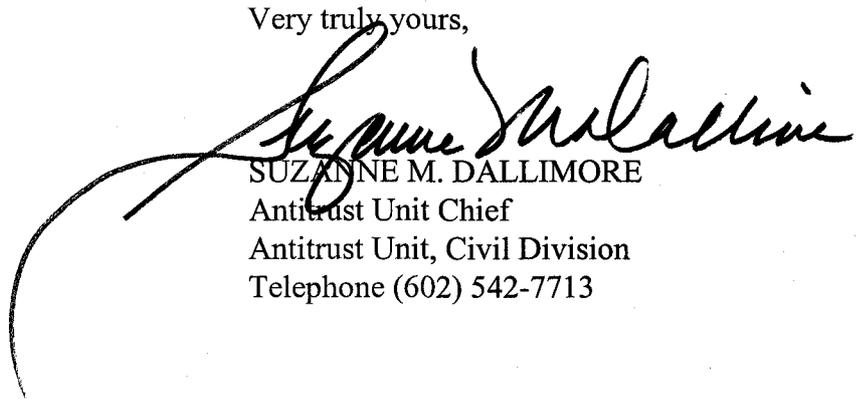
Citizens' Utilities comments: The Attorney General objects to "transitional" costs, including metering replacement or other future metering costs being considered a part of stranded costs. We agree with Citizens that all customers should pay any CTC. We object to the incumbents' continuing monopoly over metering and billing, and suggest that metering and billing standards be uniform and competitively neutral, but that the provision of these services be open to competition. We object to any priority of access to the distribution or transmission facilities of a UDC.

As to the affiliate rules, we do not want to have a review process delay the onset of competition. The affiliate rules' issues turn on market power problems within Arizona, many of which are solved by divestiture of generation assets. Antitrust law will apply to affiliate transactions and abuses of market power, so elaborate affiliate rules may not be necessary under competition.

TEP Comments: The Attorney General objects to TEP's proposed 1MW limit on who will have direct access to competitive power, and to any additional guarantees to the recovery of purchased power costs incurred under competition. We object to the inclusion of "competitive analysis and implementation" costs in the systems benefit charge. We do agree that any interpretation of the use of "wider markets" to offset stranded costs that might increase the likelihood of cross-subsidization should be removed from the rules.

The Attorney General reserves the right to make additional comments on the proposed rules and any other comments thereon at the appropriate public hearing.

Very truly yours,



SUZANNE M. DALLIMORE
Antitrust Unit Chief
Antitrust Unit, Civil Division
Telephone (602) 542-7713

AN ORIGINAL AND TEN COPIES

of the foregoing were filed this 2nd day of
October, 1998 with:

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

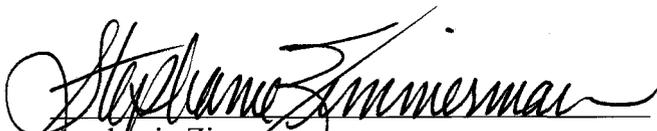
COPIES of the foregoing were hand-delivered
this 2nd day of October, 1998 to:

Jerry Rudibaugh, Chief Hearing Officer
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Paul Bullis, Chief Counsel
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Phoenix, AZ 85007

Ray T. Williamson
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Arizona Corporation Commission
1200 W. Washington Street, Room 206
Phoenix, AZ 85007

COPIES of the foregoing were mailed
to all other participants in
Docket No. RE-00000C-94-0165
this 2nd day of October, 1998.


Stephanie Zimmerman