



0000121354

ARIZONA CORPORATION COMMISSION

RECEIVED  
AZ CORP COMMISSION Arizona Corporation Commission

DOCKETED

JAN 29 12 06 PM '99

JAN 29 1999

1 JIM IRVIN  
2 Commissioner-Chairman  
3  
4 TONY WEST  
5 Commissioner  
6 CARL J. KUNASEK  
7 Commissioner

DOCUMENT CONTROL

DOCKETED BY

Cfw

7 IN THE MATTER OF THE COMPETITION )  
8 IN THE PROVISION OF ELECTRIC )  
9 SERVICES THROUGHOUT THE )  
10 STATE OF ARIZONA )

DOCKET NO. RE-00000C-94-0165

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.'S  
RECOMMENDED RULES  
CHANGES

11 The Arizona Electric Power Cooperative, Inc. ("AEPSCO") submits these  
12 recommendations for changes to the Retail Electric Competition Rules.

13 These recommendations are divided into two sections. Major policy matters will be  
14 discussed in this portion of the filing. Attached as Exhibit A is a list of more technical but as  
15 important requested Rules' modifications and Exhibit B is a rewrite of R14-2-1610. Specific  
16 language deletions and additions are included unless the recommendation is to add or delete bulk  
17 material such as sentences, an entire paragraph, section or Rule.

18 AEPSCO appreciates this opportunity to provide input on the Rules' text. These  
19 comments are guided by the following principles:  
20

- 21 • This is supposed to be a deregulation effort. As it stands now, the integrated,  
22 double-spaced version of the Rules runs 97 pages. Many of the following  
23 recommendations attempt to move this process back to what the Commission  
24 wants – a market based, consumer choice system, not government control.
- 25 • Several of the Rules unfairly and discriminatorily punish and hamstring Affected  
26 Utilities. The competitive market is not strengthened by weakening entities that  
27 have served Arizona well for decades.
- The Rules contain many expensive, unnecessary mandates that will increase, not  
reduce, costs to all consumers – the antithesis of what this effort is about.

GALLAGHER & KENNEDY

A PROFESSIONAL ASSOCIATION

2600 NORTH CENTRAL AVENUE

PHOENIX, ARIZONA 85004-3020

(602) 530-8000

- 1
- 2 • Finally, the Rules exceed the Commission's jurisdiction, conflict in several
  - 3 respects with HB 2663 and violate Federal law. In their present form, the Rules

4 The recommendations offered in this filing represent significant improvements to the Rules on each

5 of these points.

6 **R14-2-1606.A. Services Required to be Made Available**

7 **Recommendation:** Rewrite R14-2-1606.A as follows:

- 8 A. Each Affected Utility and Utility Distribution Company shall make available
- 9 to all consumers whose annual usage is 100,000 kWh or less in its service
- 10 area, ~~as defined on the date indicated in R14-2-1602~~, Standard Offer bundled
- 11 generation, transmission, ancillary, distribution, and other necessary services
- 12 at regulated rates. ~~After January 1, 2001, Standard Offer service shall be~~
- 13 ~~provided by Utility Distribution Companies who shall also act as Providers of~~
- 14 ~~Last Resort.~~

15 **Issue:** The provider of last resort requirement in Paragraph A should be conformed to A.R.S. §40-

16 202.B.5 (Section 23 of HB 2663) and limited to consumers whose annual usage is 100,000 kWh or

17 less. Including large commercial and industrial consumers in the requirement increases Standard

18 Offer costs and makes planning a nightmare. It also provides "gaming" opportunities between

19 Standard Offer and competitive service for the large, sophisticated consumer as prices change

20 seasonally and in response to market forces. Deletion of the final sentence removes the forced

21 divestiture element of the current Rules.

22 **R14-2-1606.B**

23 **Recommendation:** Delete R14-2-1606.B and re-letter the remaining paragraphs.

24 **Issue:** R14-2-1606.B specifies that Standard Offer power be obtained by competitive bid and that the

25 resulting contract contain a ratchet provision. The provision is unnecessary because Standard Offer

26

27

1 must compete with competitive offers and therefore utilities will be incented by the market to seek  
2 lowest cost Standard Offer sources and mixes. This provision is also expensive and unreasonably  
3 inflexible. RFP and response mechanisms are costly and frequently do not deliver the best deal. It  
4 impermissibly interferes with utility management and is inconsistent with deregulation goals. It  
5 exceeds Commission jurisdiction (HB 2663 contains no such authorization). Finally, as to AEPCO  
6 and its member distribution cooperatives, it breaches the all-requirements agreements, frustrates the  
7 purpose of the RE Act and sets up an unavoidable conflict with federal law.  
8

9 **R14-2-1609 and R14-2-1608.A. Solar Portfolio Standard and System Benefits Charges**

10 Recommendation: Delete R14-2-1609 in its entirety and renumber the remaining sections  
11 accordingly. Also, strike the final two sentences concerning the solar water heater rebate program in  
12 R14-2-1608.A.

13 Issue: The Solar Portfolio Standard is (1) enormously expensive, (2) mandates construction of  
14 capacity when none is needed, (3) injects government control into what is supposed to be a  
15 deregulated, market based system and (4) requires construction of the least efficient solar application  
16 (central station v. smaller, disseminated applications). This and the solar water heater rebate program  
17 in R14-2-1608.A exceed the Commission's jurisdiction and impermissibly interfere with internal  
18 utility management. Based on a strategic plan focusing on least cost principles, AEPCO's  
19 compliance costs for the Solar Portfolio Standard are currently estimated to be \$41 million in  
20 additional costs in cumulative total 1999 net present value dollars. If the market does not buy these  
21 resources, the Rule will have created additional stranded cost. There is a place for solar energy  
22 resources and, in many circumstances, they are efficient, least cost choices. This Rule's blanket  
23 mandate, however, is expensive, inefficient and interferes with consumer choice.<sup>1</sup>  
24  
25

26 ///

27  

---

<sup>1</sup> A companion reference to the Solar Electric Fund in R14-2-1601.37 should also be deleted (Exhibit A, page 1).

1 **R14-2-1616 and R14-2-1617. Separation of Monopoly and Competitive Services**  
2 **and Affiliate Transactions**

3 **Recommendation:** Delete all of R14-2-1616.<sup>2</sup> Also, delete all of R14-2-1617, re-title it as **Cross-**  
4 **Subsidization Prohibited** and substitute the following:

5 Competitive services offered by an Affected Utility, Utility Distribution  
6 Company or their affiliates, if any, shall not be subsidized by any rate or  
7 charge for any Standard Offer service.

8 **Issue:** These Rules force divestiture, unreasonably deny both to the competitive and Standard Offer  
9 customer the economies and efficiencies of joint operation, unfairly punish Arizona's Affected  
10 Utilities and are the best examples of a central government "command and control" regimen in what  
11 is supposed to be a market based, deregulation initiative. They are also solutions in search of  
12 problems. There has been no showing that market power is an Arizona problem – certainly not  
13 among its many customer owned, member run cooperatives where distribution is already separate  
14 from generation and transmission. Finally, these Rules were simply sprung upon the parties last  
15 summer with five days of reaction time and no hearing opportunity allowed. Parties should at least  
16 be given a reasonable, meaningful chance to offer evidence and comment on them. As the  
17 Commission has done in its Competitive Telecommunications Rules (R14-2-1109.C), it is sufficient  
18 simply to prohibit cross subsidies between services.  
19  
20

21 **R14-2-1618. Disclosure of Information**

22 **Recommendation:** Delete R14-2-1618.

23 **Issue:** As paragraph A of this Rule affirmatively reflects, the tracking mechanism necessary to  
24 assure accurate information disclosure does not currently exist. Until it does, this Rule should be  
25 deleted.  
26  
27

---

<sup>2</sup> Companion changes to R14-2-1603.A and 2-1605 are recommended at pages 2-3 and 4 of Exhibit A.

1 **R14-2-1610. Transmission and Distribution Access**

2 **Recommendation.** Suggested revisions to R14-2-1610 are attached as Exhibit B.

3 **Issue:** As discussed in last week's comments, this Rule sets up many unnecessary jurisdictional  
4 conflicts with FERC – conflicts which the Commission recognized in its recent Order staying the  
5 Rules.<sup>3</sup> The suggested modifications avoid these conflicts:

- 6 • Transmission rights and rates are FERC jurisdictional and based upon a  
7 substantial body of federal law.
- 8 • To the extent that the Commission wants to establish state jurisdiction over  
9 portions of the system, it must first seek a FERC classification of the wires as  
10 transmission or distribution on a line-by-line, system-by-system basis.
- 11 • FERC holds exclusive jurisdiction over transmission tariffs and unbundled  
12 pricing, whether at retail or wholesale.
- 13 • Finally, must-run transactions and services are also FERC jurisdictional  
14 matters.

15 The attached recommendations remove these conflicts and will allow retail competition to move  
16 forward. If the Rule is left as it is, several hearings and FERC filings will be necessary – a process  
17 which will take at least 12-18 months.

18 **Conclusion**

19 AEPCO appreciates this opportunity to provide comments on the Rules and requests  
20 that the Hearing Officer modify the Rules as recommended herein.

21 RESPECTFULLY SUBMITTED this 29th day of January, 1999.

22 GALLAGHER & KENNEDY, P.A.

23 By Michael M. Grant

24 Michael M. Grant  
25 2600 North Central Avenue  
26 Phoenix, Arizona 85004-3020  
27 Attorneys for Arizona Electric Power  
Cooperative, Inc.

<sup>3</sup> Last week's filing and all prior comments on and Applications for Rehearing in relation to the Rules are incorporated herein.

1 Original and ten (10) copies of the foregoing document  
2 filed this 27<sup>th</sup> day of January, 1999, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 Copy of the foregoing document  
8 mailed this 27<sup>th</sup> day of January, 1999, to  
9 all parties of record.

10  
11 

12 \_\_\_\_\_  
13 #679237 v1 - Recommended Rules Changes

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

GALLAGHER & KENNEDY  
A PROFESSIONAL ASSOCIATION  
2600 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85004-3020  
(602) 530-8000

Exhibit

A

## ADDITIONAL RULES' CHANGE RECOMMENDATIONS

### R14-2-1601

R14-2-1601.37. This definition of "Solar Electric Fund" is tied to the Solar Resource Portfolio and should be stricken.

R14-2-1601.40. This definition of "System Benefits" should be modified to include fossil plant decommissioning costs. Although not as expensive as nuclear, this type of cost is still considerable and there is no reason to treat it differently. We also suggest some examples of "market transformation" costs:

40. "System Benefits" means Commission-approved utility low income, demand side management, market transformation, such as development of load profiles and multiple transaction tracking software, environmental, renewables, long-term public benefit research and development, ~~and~~ nuclear fuel disposal and nuclear and fossil power plant decommissioning programs.

### R14-2-1602

This Rule specifies tariff filing by December 31, 1997 and is obviously outdated. The existing language should be stricken. The Commission might want to consider using this Rule to establish a new start date for competition through separate Order:

The Commission will, by separate order, establish a coordinated commencement date for competitive services and other requirements established by these Rules.

### R14-2-1603

R14-2-1603.A. Consistent with the changes to the Rules recommended previously, this paragraph should be modified to remove the forced divestiture element of R14-2-1616.A:

A. Any Electric Service Provider intending to supply services described in R14-2-1605 or R14-2-1606, other than services subject to federal jurisdiction, shall obtain a Certificate of Convenience and Necessity from the Commission pursuant to this Article. A Certificate is not required to offer information services, billing and collection services, or self-aggregation. However, aggregators as defined in R14-2-1601 are required to obtain a Certificate of Convenience and Necessity and Self-Aggregators are required to negotiate a Service Acquisition Agreement consistent with subsection G(6). An Affected Utility need not apply for a Certificate of Convenience and Necessity to continue to provide electric service ~~in its service area during the transition period set forth in R14-2-1604. An Affected Utility providing distribution and Standard Offer service after January 1, 2001 need not apply for a Certificate of Convenience and Necessity. All other Affected Utility affiliates created in compliance with R14-2-1616(A) shall be required to apply for appropriate Certificates of Convenience and Necessity.~~

#### **R14-2-1604**

Various Dates. Throughout this Rule and elsewhere, various dates are mentioned such as January 1, 1999, which obviously are now not feasible or possible. Many of them may be stricken or reference made to the separate Commission order described in the recommended change to R14-2-1602.

R14-2-1604.A.3. This paragraph should be modified, consistent with R14-2-1613.K.6, to clarify that large consumer loads must be metered, not load profiled:

3. Affected Utilities shall notify customers eligible under this subsection of the terms of the subsection no later than October 31, 1998. Metering for eligible customers shall be in accordance with R14-201613.K.6.

R14-2-1604.C. The benefits report date of September 15, 1998 has passed and this provision should be deleted.

R14-2-1604.E. This is a companion, preference provision to the Solar Resource Portfolio standard and should be stricken.

**R14-2-1605**

As a companion to deletion of forced divestiture and to clarify that Affected Utilities may offer competitive services, the following new sentence should be added at the beginning of this Rule:

An Affected Utility may provide competitive services in its service territory.

**R14-2-1606**

R14-2-1606.F. To preserve appropriate jurisdictional allocations between the Commission and FERC but also to accomplish the desired open access, amend this provision as follows:

- F. The Affected Utilities must provide transmission, distribution and ancillary services according to the following guidelines:
  1. Services must be provided consistent with applicable tariffs filed with the Federal Energy Regulatory Commission or the Southwest Regional Transmission Association in accordance with Orders 888 and 889.

2. Unless otherwise required by federal regulation, Affected Utilities must accept power and energy delivered to their ~~transmission~~ distribution systems by others and offer ~~transmission~~ distribution and related services comparable to services they provide to themselves.

R14-2-1606.G.1. For many customers, demand data will not be available. Revise to read as follows:

1. Upon written authorization by the customer, a Load-Serving Entity shall release in a timely and useful manner that customer's demand and energy data for the most recent 12-month period, if available, to a customer-specified Electric Service Provider.

**R14-2-1607**

R14-2-1607.D. Stranded cost filings have been made so the date reference to "August 21, 1998" should be stricken.

**R14-2-1613**

R14-2-1613.K.8. This provision allows meter ownership by the customer. This can result in several problems including servicing, energy theft and billing problems. We recommend the following change:

8. Meter ownership ~~will~~ shall be limited to the Affected Utility, Utility Distribution Company, and the Electric Service Provider or ~~their~~ its representative, ~~or the customer, who obtains the meter from the Affected Utility, or Utility Distribution Company or an Electric Service Provider.~~

R14-2-1613.K.13, 14 and 15. These provisions should be deleted because they impermissibly delegate to the Director of Utilities authority to promulgate Rules which should instead be commented on and adopted pursuant to the APA.

R14-2-1613.L. This provision should be deleted. The Working Group on System Reliability and Safety was first formed in response to the major western blackout in 1996 and has completed that study assignment. The provision in R14-2-1613.M concerning compliance with WSCC and Reliability Council Standards is sufficient for reliability issues. Transmission related issues may now be addressed by the AISA so the Working Group is not needed nor was it intended for that purpose.

#### **R14-2-1614**

The reports outlined in this Rule are very burdensome and will increase costs, regulatory burdens and responsibilities. We suggest that the need for this data be re-evaluated. At a minimum, reporting should be reduced to an annual, not semi-annual basis:

#### **B. Reporting Schedule**

- ~~1. For the period through December 31, 2003, semi-annual reports shall be due on April 15 (covering the previous period of July through December) and October 15 (covering the previous period of January through June). The 1st such report shall cover the period January 1 through June 30, 1999.~~
- ~~2. For the period after December 31, 2003, a~~Annual reports shall be due on April 15 (covering the previous period of January through December). The 1st such report shall cover the period January 1 through December 31, 2004  
2000.

Exhibit

B

**R14-2-1610. Transmission and Distribution Access**

- A. The Affected Utilities shall provide non-discriminatory open access to ~~transmission and~~ distribution facilities to serve all customers. No distribution preference or priority shall be given to any ~~distribution~~ customer based on whether the customer is purchasing power under the Affected Utilities' Standard Offer or in the competitive market. ~~Any transmission capacity that is reserved for use by the retail customers of the Affected Utility's Utility Distribution Company shall be allocated among Standard Offer customers and competitive market customers on a pro-rata basis.~~
- B. The Commission supports the development of an Independent System Operator (ISO) or, absent an Independent System Operator, an Independent Scheduling Administrator (ISA).
- C. The Commission believes that an Independent Scheduling Administrator is necessary in order to provide non-discriminatory retail access and to facilitate a robust and efficient electricity market. Therefore, those Affected Utilities that own or operate Arizona transmission facilities shall file with the Federal Energy Regulatory Commission ~~by October 31, 1998~~ for approval of an Independent Scheduling Administrator, ~~having the following characteristics:~~
- ~~1. The Independent Scheduling Administrator shall calculate Available Transmission Capacity (ATC) for Arizona transmission facilities that belong to the Affected Utilities or other Independent Scheduling Administrator participants, and shall develop and operate an overarching statewide OASIS.~~
  - ~~2. The Independent Scheduling Administrator shall implement and oversee the non-discriminatory application of protocols to ensure statewide consistency for transmission access. These protocols shall include, but are not limited to, protocols~~

~~for determining transmission system transfer capabilities, committed uses of the transmission system, available transfer capabilities, and Must Run Generating Units.~~

~~3. The Independent Scheduling Administrator shall provide dispute resolution processes that enable market participants to expeditiously resolve claims of discriminatory treatment in the reservation, scheduling, use and curtailment of transmission services.~~

~~4. All requests (wholesale, Standard Offer retail, and competitive retail) for reservation and scheduling of the use of Arizona transmission facilities that belong to the Affected Utilities or other Independent Scheduling Administrator participants shall be made to, or through, the Independent Scheduling Administrator using a single, standardized procedure.~~

~~**D.** The Affected Utilities that own or operate Arizona transmission facilities shall file a proposed Independent Scheduling Administrator implementation plan with the Commission by September 1, 1998. The implementation plan shall address Independent Scheduling Administrator governance, incorporation, financing and staffing; the acquisition of physical facilities and staff by the Independent Scheduling Administrator; the schedule for the phased development of Independent Scheduling Administrator functionality; contingency plans to ensure that critical functionality is in place by January 1, 1999; and any other significant issues related to the timely and successful implementation of the Independent Scheduling Administrator.~~

~~**E.D.** Each of the Affected Utilities shall make good faith efforts to develop a regional, multi-state Independent System Operator, to which the Independent Scheduling Administrator should~~

~~transfer its relevant assets and functions as the Independent System Operator becomes able to carry out those functions.~~

**F.E.** It is the intent of the Commission that prudently-incurred costs incurred by the Affected Utilities in the establishment and operation of the Independent Scheduling Administrator, and subsequently the Independent System Operator, should be recovered from customers using the transmission system, including the Affected Utilities' wholesale customers, Standard Offer retail customers, and competitive retail customers on a non-discriminatory basis through Federal Energy Regulatory Commission-regulated prices. Proposed rates for the recovery of such costs shall be filed with the Federal Energy Regulatory Commission and the Commission. In the event that the Federal Energy Regulatory Commission does not permit recovery of prudently incurred Independent Scheduling Administrator costs within 90 days of the date of making an application with the Federal Energy Regulatory Commission, the Commission may authorize Affected Utilities to recover such costs through a distribution surcharge.

~~G. The Commission supports the use of "Scheduling Coordinators" to provide aggregation of customers' schedules to the Independent Scheduling Administrator and the respective Control Area Operators simultaneously until the implementation of a regional Independent System Operator, at which time the schedules will be submitted to the Independent System Operator. The primary duties of Scheduling Coordinators are to:~~

- ~~1. Forecast their customers' load requirements;~~
- ~~2. Submit balanced schedules (that is, schedules for which total generation is equal to total load of the Scheduling Coordinators' customers plus appropriate transmission~~

losses) and North American Electric Reliability Council/Western System

Coordinating Council tags;

~~3. Arrange for the acquisition of the necessary transmission and ancillary services;~~

~~4. Respond to contingencies and curtailments as directed by the Control Area~~

~~Operators, Independent Scheduling Administrator or Independent System Operator;~~

~~5. Actively participate in the schedule checkout process and the settlement processes of~~

~~the Control Area Operators, Independent Scheduling Administrator or Independent~~

~~System Operator.~~

~~H. The Affected Utilities shall provide services from the Must Run Generating Units to~~

~~Standard Offer retail customers and competitive retail customers on a comparable, non-~~

~~discriminatory basis at regulated prices. The Affected Utilities shall specify the obligations~~

~~of the Must Run Generating Units in appropriate contracts prior to any divestiture. Under~~

~~auspices of the Electric System Reliability and Safety Working Group, the Affected Utilities~~

~~shall develop statewide protocols for pricing and availability of services from Must Run~~

~~Generating Units with input from other stakeholders. These protocols shall be presented to~~

~~the Commission for review and filed with the Federal Energy Regulatory Commission, if~~

~~necessary, by October 31, 1998.~~

#680046 v1 Exhibit B