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EXCEPTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN
Commissioner - Chairman
TONY WEST
Commissioner
CARL J. KUNASEK
Commissioner

DOCUMENT CONTROL DOCUMENT CONTROL

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

DOCKET No. RE-00000-C-94-165

Arizona Corporation Commission

DOCKETED

FEB 17 1999

DOCKETED BY *cfw*

**ASARCO INCORPORATED, CYPRUS CLIMAX METALS COMPANY,
ENRON CORP. AND ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION'S
EXCEPTIONS TO RECOMMENDATIONS REGARDING
ELECTRIC COMPETITION RULEMAKING**

February 17, 1999

Submitted by:
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Cyprus Climax Metals Company,
Enron Corp., and Arizonans for Electric
Choice and Competition

1 Pursuant to A.A.C. R14-3-110(B) and the Chief Hearing Officer's Procedural
2 Order dated February 12, 1999, ASARCO, Incorporated, Cyprus Climax Metals
3 Company, Enron Corp., and Arizonans for Electric Choice and Competition¹
4 (collectively referred to herein as "AECC") hereby submit their exceptions to the
5 recommendations of Hearing Officers Rodda and Wolfe on Electric Competition
6 Rulemaking ("Recommended Rules"). These exceptions cover the Hearing Officer's
7 recommended order, suggested revisions to the Electric Competition Rules which are
8 set forth in Appendix A and the other materials attached to the Hearing Officers'
9 recommendations which are referred to collectively herein as the "Recommended
10 Rules." AECC's specific comments and exceptions regarding the Recommended
11 Rules are as follows.

12 **Introductory Comments**

13 On January 11, 1999, the Commission stayed implementation of A.A.C. R14-
14 2-201, et seq. and R14-2-1601, et seq. (the " Electric Competition Rules") "in order
15 to take action consistent with the public interest and due process." Decision No.
16 61311 (January 11, 1999) at 5. As the Commission noted, it had "failed to
17 adequately address the issues necessary to begin implementing competition in the
18 electric industry in a timely or consistent manner." Although important issues such
19 as the individual Affected Utilities' stranded cost recovery and unbundled tariffs
20 remained to be determined at the time the stay was issued, it seemed clear that the

21 _____
22 ¹ Arizonans for Electric Choice and Competition is a coalition of companies and
23 associations in support of competition and includes Cable Systems International, BHP
24 Copper, Motorola, Chemical Lime, Intel, Hughes, Honeywell, Allied Signal, Cyprus Climax
25 Metals, Asarco, Phelps Dodge, Enron, Homebuilder's of Central Arizona, Arizona Mining
26 Industry Gets Our Support, Arizona Food Marketing Alliance, Arizona Association of
Industries, Arizona Multi-housing Association, Arizona Rock Products Association, Arizona
Restaurant Association, Arizona Association of General Contractors, and Arizona Retailers
Association.

1 Commission did not intend to postpone electric competition indefinitely or to open the
2 door for the parties to undo everything that has been accomplished over the last four
3 years.

4 Nevertheless, many of the changes proposed in the Recommended Rules
5 reverse Commission decisions and policy developed over the course of the last four
6 years. In fact, these changes reflect an apparent desire to appease the Affected
7 Utilities at the expense of consumers. AECC respectfully submits that changes
8 which significantly transform provisions of the Electric Competition Rules are not only
9 unnecessary but harmful to the public interest. Accordingly, AECC urges the
10 Commission to resist the effort to open the door to wholesale revisions to the Electric
11 Competition Rules at this time.

12 **R14-2-210. Billing and collection²**

13 **E. Meter Error Correction (p. 35)**

14 ***Change* first line of E.1 as follows³:**

15 If a tested residential customer meter is found to be more
16 than 3% in error, or if a tested commercial or industrial
17 customer meter is found to be more than 1% in error,
18 either fast or slow, the correction of previous bills will be
19 made under the following terms allowing the utility or
20 billing entity to recover or refund the difference:

21 A variance of 3% may be acceptable for residential customer meters.
22 However, for commercial and industrial customer meters, this margin of error is too
23 high. For example, allowing for this variance, an industrial customer with a
24 monthly power bill of \$1 million dollars could be subject to a margin of error equal

24 ² The numbering used herein corresponds to the numbering set forth in the Recommended
25 Rules at Appendix A rather than the strikethrough version of Appendix A issued by the
26 Hearing Division on February 11, 1999.

³ Proposed deletions are shown in the strikethrough format and proposed additions are
underlined.

1 to \$30,000. Such a variance is unnecessary when electronic measurement is
2 accurate to 0.02%.

3 **R14-2-1601. Definitions**

4 **Restore** the following definition at p. 51, between R14-2-1601 (3) and (4):

5 "Buy-through" refers to a purchase of electricity by a Load-
6 Serving Entity at wholesale for a particular retail consumer
7 or aggregate of consumers or at the direction of a
8 particular retail consumer or aggregate of consumers.

9 This identical language (formerly R14-2-1601(4)) is proposed for deletion in
10 the Recommended Rules because of concerns that it was a "method to avoid the
11 20% cap during the transition to full competition." This language was never
12 intended to provide a means of avoiding limitations on access to competition.
13 Instead, as recognized by the Legislature when it adopted HB 2663, requiring Load-
14 Serving Entities to allow for buy-through services provides an important safety net for
15 customers who have acted in reliance on the timely introduction of full and open
16 retail access to electric generation.

17 However, in light of the concerns expressed by the Hearing Officers, AECC
18 now recommends that Affected Utilities only be required to allow for "buy-throughs"
19 after January 1, 2001, the anticipated date for full retail access to competition. This
20 suggestion is reflected in AECC's exceptions to R14-2-1604, *infra*. In this manner,
21 consumers will be afforded the protections of "buy-through" services without any
22 risk that "buy-through" obligations will be contrary to competitive access limitations
23 during the transition period.

24 (9) "Direct Access Service Request" (p. 52)

25 **Restore** the words "or the customer" at the end of the last sentence of this
26 definition (p. 52).

1 This language was deleted in the Recommended Rules because it is
2 supposedly more "efficient" to require that requests be made through the ESPs.
3 Although this may be true, customers may not have completed the process of
4 selecting an ESP at the time it is required to file the DASR. Customers should not
5 be penalized in such circumstances.

6 (26) "Must-Run Generating Units" (p. 54)

7 **Change** this definition as follows:

8 "Must-Run ~~Generation~~ Generating Units" ~~means are these~~
9 local generation ~~generating units~~ that is ~~are~~ required to
10 operate ~~run~~ for electric system security and stability ~~to~~
11 ~~maintain distribution system reliability and to meet load~~
12 ~~requirements in times of congestion on certain portions of~~
13 ~~the interconnected transmission grid as may be~~
14 ~~determined by the Federal Energy Regulatory~~
15 ~~Commission.~~

16 This definition of "Must-Run Generation Units" is more straight-forward as it
17 eliminates unnecessary reliance on something other than the Commission's Electric
18 Competition Rules.

19 (27) "Noncompetitive Services" (p. 54)

20 **Change** this definition as follows:

21 "Noncompetitive Services" means distribution service,
22 Standard Offer Service, transmission service, ~~and Federal~~
23 ~~Energy Regulatory Commission required~~ any ancillary
24 ~~services deemed to be non-competitive by the Federal~~
25 ~~Energy Regulatory Commission~~, Must-Run Generation
26 Services, provision of customer demand and energy data
to Electric Service Providers, and those aspects of
metering service set forth in R14-2-1613.K.

1 FERC rules allow certain ancillary services to be sold competitively where
2 competition for that product is possible in a given area. Thus, there is no reason to
3 define all FERC ancillary services as non-competitive.

4 (34) "Standard Offer Service" (p. 55)

5 **Modify** this definition as follows:

6 "Standard Offer Service" means Bundled Service offered
7 by the Affected Utility or Utility Distribution Company to
8 all consumers in the Affected Utility's or Utility
9 Distribution Company's service territory ~~whose annual~~
10 ~~usage is 100,000 kwh or less~~ at regulated rates,
11 including metering, meter reading, billing, collection
12 services and consumer information services. All
13 components of Standard Offer Service shall be deemed
14 noncompetitive as long as those components are provided
15 in a bundled transaction pursuant to R14-2-1606(A).

12 These modifications essentially reinstate the previous definition of "standard
13 offer" which has been amended in the Recommended Rules. The proposed
14 amendments specifically limits Standard Offer Service to only those customers
15 whose total annual usage is 100,000 kWh or less. This would mean that
16 Competitive Service is the only option for customers with an annual usage in
17 excess of 100,000 kWh beginning on the initial start date of competition.
18 However, the specific provisions for phasing-in competition (R14-2-1604) do not
19 guarantee 100% participation by this, or, for that matter any other customer group,
20 prior to January 1, 2001.

21 This change is suggested to promote consistency with H.B. 2663.
22 Unfortunately, however, if adopted, the Recommended Rules would result in those
23 customers with an annual consumption above 100,000 kWh who, for whatever
24 reason, are not eligible for competition during the transition period, being left
25 without any option for purchasing electric power during the transition period.
26 Certainly, this is an unintended result of the Recommended Rules.

1 (35) "Stranded Cost" (p. 56)

2 **Delete** the following section:

3 ~~d. Other transition and restructuring costs as approved by the~~
4 ~~Commission.~~

5 The addition of "other transition and restructuring cost as approved by the
6 Commission" is nothing more than an open-ended blank check. Affected Utilities
7 will be able to continue fighting deregulation at the expense of the consumers who
8 will pay the costs as well as suffer the harm from the delay.

9 (36) "System Benefits" (p. 56)

10 **Amend** this definitions as follows:

11 "System Benefits" means Commission-approved utility
12 low income, demand side management, consumer
13 education, market transformation, environmental,
14 renewables, long-term public benefit research and
15 development and nuclear fuel disposal and nuclear power
16 plant decommissioning programs; provided, however, that
17 systems benefits charges associated with nuclear power
18 should be applied only to customers of utilities receiving
19 power from nuclear power plants.

20 It is simply inequitable to make customers who do not receive any benefit
21 from nuclear power plants pay any of the costs associated with those plants.

22 (39) "Unbundled Service" (p. 56)

23 **Insert** "Must-Run Generation" in the definition of unbundled services following
24 "distribution".

25 (40) "Utility Distribution Company" (p. 56)

26 **Delete** the last sentence of this definition.

~~For the purposes of R14 2 1617, UDC also includes any~~
 ~~affiliate of an ESP that would be deemed a UDC if~~
 ~~operating in Arizona, and subject to the Commission's~~
 ~~jurisdiction.~~

 As discussed hereinbelow, this new language added in the Recommended

1 Rules constitutes an improper attempt by the Commission to regulate utilities
2 operating outside of Arizona. The purpose of the affiliate transaction restrictions in
3 the Electric Competition Rules is to preclude market abuses by incumbent utilities.
4 Therefore, regulation of out-of-state utilities is unnecessary. Moreover, this attempt
5 at "long-arm" jurisdiction raises serious concerns regarding due process and
6 interference with interstate commerce.

7 **R14-2-1602. Commencement of Competition**

8 Subsection A (p. 57)

9 **Add** "which date shall be no later than October 1, 1999" to the end of this
10 subsection.

11 AECC agrees that the former R14-2-1602 has been rendered meaningless.
12 However, AECC urges the Commission to modify this section as contained in the
13 recommended Rules to include a date certain by which the Commission will have
14 completed the process of approving stranded cost recovery and unbundled tariffs for
15 each Affected Utility. AECC suggests October 1, 1999, as the date for competition
16 to begin in the service territories of the Affected Utilities subject to the Electric
17 Competition Rules. Without a date certain, the proceedings will continue to drag out
18 and there will be no competition even by January 1, 2000, a full year after the start
19 of competition in the public power entities' service territories. Amazingly, the
20 legislative process to deregulate electric power generation in those territories began
21 on January 1, 1998 and competition was initiated on December 31, 1998. In
22 contrast, there is no competition in the jurisdiction of the Commission after over four
23 years of proceedings.

24 **R14-2-1603. Certificates of Convenience and Necessity**

25 Subsection J (pp. 60-61)

26 **Replace** the time frames set forth in this subsection as follows:

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- 2. Within ~~120~~ 30 calendar days. . . .
- 3. . . . deficiencies within ~~60~~ 30 calendar days of the notice. . .
- 4. . . . within ~~30~~ 10 calendar days if the corrected. . .
- 5. Within ~~180~~ 120 calendar days after an application . . .

Although AECC supports the establishment of time frames for the processing of new CC&N applications as a means of streamlining the approval of such applications, upon further review, AECC respectfully submits that the time periods set forth in the Recommended Rules are simply too long.

R14-2-1604. Competitive Phases

Subsection A (p. 62)

Amend this subsection as follows:

At the date established pursuant to R14-2-1602(A), each Affected Utility shall make available at least ~~230~~ 20% of its ~~19985~~ system retail peak demand for competitive generation supply on a first come first served basis as further described in this rule. First come, first served for purposes of this rule, shall be determined for non-residential customers by the date and time of an Electric Service Provider's filing of a Direct Access Service Request with the Affected Utility or Utility Distribution Company. The effective date of the Direct Access Service Request must be within ~~60~~ 180 days of the filing date of the Direct Access Service Request. Residential customer selection will be determined under approved residential phase-in programs as specified in R14-2-1604.B.4.

The lower percentage (20%) and earlier date (1995) are carryovers from the 1996 version of the Electric Competition Rules which have little significance in 1999. AECC had previously suggested these changes prior to the Recommended Rules. However, no explanation was given for retaining these long irrelevant restrictions on the introduction of competition. In any event, in light of the delays experienced, it is now appropriate to use a date and percentage which result in higher levels of competition during the transition phase. This is particularly

1 necessary if the increased residential eligibility adopted by the Commission late last
2 year is retained. See R14-2-1604(B). This increased eligibility for residential
3 customers is prejudicial and will harm commercial and industrial customers unless
4 the 20% level is increased.

5 The value of the 180 day notice is that it provides some opportunity for a
6 contract customer to "get in line" for retail access, since contract customers will
7 otherwise be impeded from participating on a first-come, first-served basis. Even a
8 180 day notice provision will not provide an equal opportunity for retail access for
9 those contract customers whose contracts expire in the second year of the phase-
10 in. Of course, a flash cut would resolve this problem.

11 Subsection A(1) (p. 62)

12 **Amend** this subsection as follows:

13 All Affected Utility customers with single premise non-
14 coincident peak demand load of 1 MW or greater will be
15 eligible for competitive electric services upon the
16 commencement of competition. Customers meeting this
17 requirement shall be eligible for competitive services until
18 at least ~~230%~~ of the Affected Utility's 19985 system
19 peak demand is served by competition.

17 These changes are consistent with the changes proposed hereinabove to
18 increase competitive eligibility during the transition period in order to mitigate the
19 negative impact on consumers of delays in introducing competition.

20 Subsection A(2) (p. 62)

21 **Amend** this subsection as follows:

22 ~~During 1999 and 2000, an Affected Utility's Affected~~
23 ~~Utility~~ customers with single-premise non-coincident peak
24 load demands of 40 kW or greater aggregated by an
25 Electric Service Provider into a combined load of 1 MW or
26 greater within the Affected utility's service territory will
be eligible for competitive electric services. Self-
aggregation is also allowed pursuant to the minimum and
combined load demands set forth in this rule. If peak load
data are not available, the 40 kW criterion shall be

1 determined to be met if the customer's usage exceeded
2 16,500 kWh in any month within the last 12 consecutive
3 months. From January 1, 1999, through December 31,
4 2000, aggregation of new competitive customers will be
5 allowed until such time as at least ~~23~~30% of the Affected
Utility's 1998~~5~~ system peak demand is served by
competitors. At that point all additional aggregated
customers must wait until January 1, 2001 to obtain
competitive service.

6 The deletion of the "self-aggregation provision in this section was wrongly
7 attributed to AECC. This language is necessary to allow individual customers with
8 multiple locations to "self-aggregate" in order to obtain eligibility. Similarly,
9 insertion of the phrase "single premise" precludes individual customers with
10 multiple sites from aggregating these loads in order to be eligible for competition.

11 Subsection (A)(4) (p. 63)

12 **Add** a new section after subsection (A)(3):

13 4. Notwithstanding the limitation to at least 30% of
14 the Affected Utility's 1998 system peak demand provided
15 for in paragraphs 1 and 2 of this section, effective
16 January 1, 1999, all loads served by Load Serving
17 Entities under individual contracts will be eligible for
18 competitive services upon the expiration of such contract.

19 Currently, the Rules discriminate against customers presently receiving
20 energy and power under individual contacts with Affected Utilities. The
21 Recommended Rules inexplicably decline to address this discrimination. In any
22 event, if these customers have to pay standard offer rates, those standard offer
23 payments will result in huge profits for Affected Utilities. Perhaps more
24 importantly, forcing these large electric consumers to standard offer tariffs, even
25 for one to two years, will have devastating economic impacts on these customers,
26 their employees and the communities in which they reside. In certain industries,
such as Arizona's already depressed copper industry, such substantial increases in
operating expenses could result in the termination of operations and loss of jobs for

1 Arizona citizens as well as reduced revenue to local governments.

2 The discrimination against these customers is also inequitable. The rates for
3 individual contract customers have kept these customers on the Affected Utility's
4 system rather than having these customers self-generate. By remaining on the
5 system and purchasing enormous quantities of electric power, these individual
6 contract customers have paid significant portions of the utility's fixed costs
7 lowering the rates paid by the rest of the utility's customers. In addition, many of
8 these contracts have "interruptible" provisions that enable Affected Utilities to meet
9 peak demand of customers without constructing additional capacity. Adopting rules
10 governing competition that fail to recognize the unique service characteristics of
11 individual contract customers is also inequitable. For example, some individual
12 contract customers take service at high voltage and own their own substations and
13 distribution systems. These factors reduce the costs of service and must be
14 recognized in the Rules.

15 Subsection B (p. 63)

16 **Replace** the first sentence of this subsection with the following:

17 As part of the minimum 30% 20% of 19985 system
18 peak demand set forth in R14-2-1604(A), each Affected
19 Utility shall reserve a residential phase-in program with
20 the following components:

21 These changes are consistent with the changes proposed hereinabove to
22 increase competitive eligibility during the transition period in order to mitigate the
23 negative impact on consumers of delays in introducing competition.

24 Subsection (B)(6) (p. 64)

25 **Add** a new subsection after subsection (B)(5) as follows:

26 6. On October 31, 1999, Affected Utilities shall
 reallocate to all other customer classes, on a pro rata
 basis, all capacity previously reserved for residential

1 customers pursuant to R14-2-1604.B.1 which is not
2 being used for the provision of competitive services to
3 residential customers. Such pro rata reallocation shall
4 also occur on April 30, 2000 and October 31, 2000.

5 The reservation of a substantial portion of the total competitive capacity as
6 residential capacity as set forth in R14-2-1604(B)(1) makes little practical sense. To
7 date, despite the filing of several competitive CC&N applications by Electric Service
8 Providers, none of these entities have requested authority to serve residential
9 customers. Therefore, after an appropriate time, this capacity, if not utilized for
10 service to residential customers should be reallocated to those customers who can
11 receive competitive energy services from certified Electric Service Providers. A
12 similar approach was suggested by AECC and APS and adopted for use in the Salt
13 River Project service territory.

14 Subsection G (p. 65)

15 **Restore** subsection G as follows:

16 From and after January 1, 2001, Load Serving entities
17 shall provide for buy-through service to any electric
18 consumer on request at no additional charge other than
19 charges for required transmission, distribution, or ancillary
20 services and any non-bypassable charges that would
21 otherwise apply.

22 As discussed hereinabove, the provision requiring "buy-through" services is
23 proposed for deletion due to concerns that it is a means to avoid the limits on
24 competitive access during the transition period. This problem is addressed herein by
25 allowing for "buy-throughs" only after January 1, 2001. In this way, requiring Load-
26 Serving Entities to allow for buy-through services will provide the important safety
net for customers who have acted in reliance on the timely introduction of full and
open retail access to electric generation without concern over avoidance of the
limited access provided by these rules during the transition period. This will also

1 provide consistency with Arizona law which mandates that buy-through service be
2 provided by public power entities from and after January 1, 2001. See A.R.S. § 30-
3 803.D.

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

5 Subsection (B) (p. 65)

6 ***Amend*** this subsection as follows:

7 After January 1, 2001, power purchased by a Utility
8 Distribution Company to provide Standard offer Service
9 shall be acquired through ~~the open market~~ competitive
10 bidding.

11 This modification restores this provision's language. The Commission should
12 impose the burden of obtaining the best price for standard offer service customers
13 upon the utilities. This language accomplishes this goal. To acquiesce to the
14 utilities' objections is inappropriate and not in the best interests of consumers.

15 Subsection (C)(5) (p. 66)

16 ***Delete*** this subsection.

17 ~~After January 1, 2001, tariffs for Standard Offer Service~~
18 ~~shall not include any special discounts or contract with~~
19 ~~term, or any tariff which prevents the customer from~~
20 ~~accessing a competitive option.~~

21 There is absolutely no reason to preclude tariffs for Standard Offer Service
22 from providing an opportunity for discounts or contract terms after January 1,
23 2001, given that such individual arrangements are mutually agreeable to both
24 parties. The overriding principle behind retail competition is to provide customers
25 with increased opportunities for choice.

26 Subsection (D) (p. 66)

Add additional language to this subsection as follows:

1 By March 19, 1999, each Affected Utility or Utility
2 Distribution Company shall file an Unbundled Service
3 tariffs which shall include a Noncompetitive Services
4 tariff. These tariffs shall be based on electric service type
and capacity, rather than on energy consumption. As an
alternative, Affected Utilities may file tariffs based on
simple energy consumption (kWh).

5 AECC proposed this additional language prior to the issuance of the
6 Recommended Rules. The discussion provided in the Recommended Rules implies
7 that this additional language makes sense, but states that it will not be adopted for
8 the reason that UDCs will retain the obligation to insure adequate transmission
9 import capability to meet load requirements and the information is needed for that
10 purpose. This is incorrect.

11 It is true that UDCs will retain the obligation to meet load requirements.
12 However, this obligation is a control area function and is not impacted by end point
13 billing metering. Thus, the information is not needed for that purpose. To the
14 extent the UDCs need the information for other purposes, the UDCs will still have
15 access to metered information from MRSP servers. The rationale does not detract
16 from the reasons given in support of the amendment and the amendment should
17 therefore be adopted.

18 **R14-2-1607. Recovery of Stranded Cost of Affected Utilities**

19 Subsection (F) (p. 69)

20 **Modify** this subsection as follows:

21 A Competitive Transition Charge (CTC) may be assessed
22 on all customers continuing to use the distribution system
23 based on the amount of generation purchased from any
24 ~~supplier~~ Electric Service Provider. Any reduction in
25 electricity purchases from an Affected Utility resulting
26 from self-generation, demand side management, or other
demand reduction attributable to any cause other than the
retail access provisions of this Article shall not be used to
calculate or recover any Stranded Cost from a consumer.

1 This proposed revision provides greater consistency with the Electric
2 Competition Rules as "supplier" is not a defined term.

3 Subsection (G) (p. 69)

4 **Delete** the word "tarriffed" as indicated:

5 Stranded Cost shall be recovered from customer classes
6 in a manner consistent with the specific company's
7 current ~~tariffed~~ rate treatment of the stranded asset, in
8 order to effect a recovery of Stranded Cost that is in
substantially the same proportion as the recovery of
similar costs from customers or customer classes under
current rates.

9 This subsection, which, in all material respects, has been retained throughout
10 the Commission's efforts to adopt rules governing competition, protects customers
11 against cost shifting by ensuring that the recovery of stranded cost after the
12 introduction of competition will be in substantially the same proportion as the
13 recovery of stranded costs under current rates. The Recommended Rules insert the
14 word "tariffed" into this provision, apparently to assign proportionate responsibility
15 for stranded costs based only on certain tariffs, as distinct from individual contract
16 between an Affected Utility and its customer. Although a contract customer's
17 contract *is* their tariff, any effort to discriminate against these customers is
18 inequitable. If competition is to be fair and effective, it is essential that the CTC for
19 **all** customers be based on the contribution to such costs that customer now pays
20 to the Affected Utility under current regulation.

21 Accordingly, the original language, a consensus recommendation of the
22 Stranded Cost Working Group, which was then put forward by Staff and adopted
23 by the Commission should be retained to avoid any effort by Affected Utilities to
24 deny any customer the protections of this subsection.

25 Subsection (H) (p. 69)

26 **Restore** the following provision:

1 The Commission may order an Affected utility to file
2 estimates of Stranded Cost and mechanisms to recover
3 or, if negative, to refund Stranded Cost.

4 This provision was deleted at APS' request as redundant. However, this
5 provision provided an important consumer protection in that it provided assurance
6 that the Affected Utilities will not reap a windfall from negative stranded costs. No
7 other provision of the Electric Competition Rules adequately assures consumers a
8 refund of negative stranded costs.

9 **R14-2-1608. System Benefits Charges**

10 Subsection (A) (p. 69)

11 ***Modify this subsection as follows:***

12 Each Affect Utility or Utility Distribution Company shall
13 file for Commission review non-bypassable rates or
14 related mechanisms to recover the applicable pro-rata
15 costs of System Benefits from all consumers located in
16 the Affected Utility's or Utility Distribution Company's
17 service area. Affected Utilities or Utility Distribution
18 Companies shall file for review of the Systems Benefits
19 Charge at least every 3 years. The amount collected
20 annually through the System Benefits charge shall be
sufficient to fund the Affected Utilities' or Utility
Distribution Companies' Commission-approved low
income, consumer education, demand side management,
environmental, renewables, long-term public benefit
research and development, nuclear fuel disposal and
nuclear power plant decommissioning programs ~~and other
programs that may be approved by the Commission from
time to time.~~

21 This language was added by the Recommended Rules as a means of
22 including non-nuclear power plant decommissioning costs. However, these costs
23 are neither System Benefits or Stranded Costs. Instead, they are generation costs,
24 payable if the competitive market allows. Otherwise, Arizona customers alone will
25 pay the costs associated with power exported out of the state.

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

1 Subsection (A) (p. 70)

2 **Modify** this subsection as follows:

3 The Affected Utilities shall provide non-discriminatory
4 open access to transmission and distribution facilities to
5 serve all customers. No preference or priority shall be
6 given to any distribution customer based on whether the
7 customer is purchasing power under the Affected Utility's
8 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 ~~in accordance with FERC Orders 888 and 889.~~

9 The pro-rata allocation of transmission capacity that is reserved for use by
10 the retail customers is a feature of Arizona's state retail access program and is not
11 the result of any specific FERC directive in Orders 888 or 889.

12 Subsection (B) (p. 70)

13 **Delete** the word "Arizona" as indicated:

14 The Commission supports the development of an
15 Independent System Operator (ISO) or, absent an ~~Arizona~~
16 Independent System Operator, an Independent Scheduling
17 Administrator (ISA).

18 Subsection (C)(2) (p. 71)

19 **Change** "Must-Run Generating Units" to "Must-Run Generation" in the
20 second to last line of this subsection.

21 Subsection I (p. 73)

22 **Modify** this subsection as follows:

23 The Affected Utilities and Utility Distribution Companies
24 shall provide ~~services from the Must-Run Generation~~
25 services ~~Generating Units~~ to Standard Offer retail
26 customers and competitive retail customers on a
 comparable, non-discriminatory basis at regulated prices.
 The Affected Utilities shall specify the obligations of any
 ~~the Must-Run Generating Units~~ generation units needed
 for providing Must-Run Generation in appropriate sales

1 contracts prior to any divestiture. Under auspices of the
2 Arizona Independent Scheduling ~~Coordinator~~
3 Administrator, the Affected Utilities and other
4 stakeholders shall develop statewide protocols for pricing
5 and availability of ~~services from Must-Run Generation~~
6 ~~Generating Units~~ services ~~with input from other~~
7 ~~stakeholders~~. These protocols shall be presented to the
8 Commission for review and, when appropriate, approval,
9 and filed with the Federal Energy Regulatory Commission
10 in conjunction with the Arizona Independent Scheduling
11 Schedule Administrator tariff filing.

12 Under the auspices of the AISA, stakeholders have made considerable
13 progress in developing Must-Run Generation protocols. In accordance with the draft
14 AISA protocol, fixed Must-Run Generation costs are to be recovered through a
15 charge to end-use customers in the appropriate load zone. In some cases, such a
16 charge may be most effectively levied by the Commission when there is an
17 appropriate nexus, such as distribution service. Therefore, the Commission should
18 reserve the right to approve the Must-Run Generation protocol, when such approval
19 is appropriate.

20 **R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing**
21 **Requirements**

22 Subsection K(1) (p. 78)

23 **Delete** the words "metering or" as indicated:

24 An Electric Service Provider who provides ~~metering or~~
25 meter reading services pertaining to particular consumer
26 shall provide access using EDI formats to meter reading
data to other Electric Service Providers serving that same
consumer when authorized by the consumer.

While the use of EDI should be employed by entities in those businesses
associated with a high volume of data transactions such as Meter Reading Service
Providers, the extension of this requirement to MSPs is unrealistic. Providers of

1 metering services will be primarily involved in the installation, maintenance, and
2 replacement of Direct Access metering systems and not in market data transfer.
3 While an MSP may contract with an MRSP to provide emergency local meter
4 reading services on an exception basis, it is illogical to require them to submit this
5 data via EDI.

6 Subsections K(10) and (11) (p.79)

7 **Delete** the following subsections:

8 ~~10. Distribution primary voltage Current Transformers~~
9 ~~and Potential Transformers may be owned by the~~
10 ~~Affected Utility, Utility Distribution Company of the~~
11 ~~Electric Service Provider or their representative.~~

12 ~~11. Transmission primary voltage Current Transformers~~
13 ~~and Potential Transformers may be owned by the~~
14 ~~Affected Utility or Utility Distribution Company only.~~

15 Subsection (K)(8) provides for metering equipment ownership. Subsections
16 (K)(10) and (11) discuss subsets of metering equipment. Metering equipment and
17 metering instrument transformer issues are inseparable and there should be no
18 distinction in the Rule.

19 Subsection O(1)(d) (p. 80)

20 **Change** this subsection as follows:

21 d. Must-Run Generation Units charge

22 **R14-2-1616. Separation of Monopoly and Competitive Services**

23 Subsection (B) (p. 84)

24 **Add** the following additional language to this subsection as
25 indicated:

26 **After** January 1, 2001, an Affected Utility or Utility
Distribution Company shall not provide Competitive
Services as defined in R14-2-1601(6). This does not

1 preclude the Affected Utility or Utility Distribution
2 Company from providing metering and meter reading
3 services on behalf of ESP's for their customers utilizing
4 Load Profiling.

5 The Recommended Rules neither include metering and meter reading for load
6 profiled customers within the definition of "Noncompetitive Services" nor include
7 an exception for this provision in R14-2-1616. As a result, utilities may not provide
8 these services on behalf of ESPs, for customers who elect to participate in Direct
9 Access via Load Profiling. It is important to recall that Load Profiling is a
10 *compromise position* to legitimate Direct Access metering practice, designed to
11 eliminate the possibly onerous requirement of small customers installing interval
12 data metering. The rationale behind Load Profiling is to eliminate the cost of new
13 interval meters and to utilize the UDC's existing traditional monthly read cycle to
14 obtain the meter's monthly consumption. By eliminating the UDC from these
15 services, these amended Rules effectively cripple the Load Profiling concept.

15 **R14-2-1617. Affiliate Transactions**

16 Subsection (A) (p. 84)

17 ~~*Delete*~~ the second sentence which reads:

18 ~~For purposes of this Rule, Utility Distribution Company also~~
19 ~~includes any affiliate of an Electric Service Provider that~~
20 ~~would be deemed a Utility Distribution Company if~~
21 ~~operating in Arizona and subject to the Commission's~~
22 ~~jurisdiction.~~

23 This new sentence was added at the suggestion of APS. However, this
24 additional language is not only unnecessary, it constitutes an improper effort by the
25 Commission to exert "long-arm" jurisdiction beyond Arizona's borders.

26 The primary purpose of affiliate transaction rules is to address potential
 abuses that may arise as a result of the market power retained in the competitive
 marketplace by incumbent utilities. In such circumstances, the traditional

1 protections afforded in consumer protection and antitrust laws may be inadequate
2 to address every commercial practice in the emerging retail electric industry.
3 Therefore, codes of conduct adopted by regulators addressing the transition to
4 competition in a particular state are to be directed at the incumbent utilities in that
5 state. For example, the California PUC has adopted rules that apply to the utilities
6 in California. Likewise, the Commission is expected to do the same with respect to
7 the utilities under its jurisdiction. In this way, each state regulates within its
8 jurisdiction and relies on other states to do the same.

9 Once a regulatory agency attempts to regulate activities occurring in other
10 states, concerns regarding due process and interference with interstate commerce
11 are raised. For example, many of the provisions in R14-2-1617 would have the
12 Commission directing regulators in other states regarding how to regulate utilities
13 under their jurisdictions (e.g., see Subsections (A), (A)(2), (A)(2),(A)(7), (C)(4), pp.
14 84-88). Indeed, almost all the provisions only make sense if the other state has
15 authorized competition. However, predicated access to Arizona's market upon
16 access in another jurisdiction would clearly create an undue burden upon interstate
17 commerce. This is plainly a matter of local interest and it has no or little impact on
18 interstate commerce.

19 APS' argument that a level playing field will not exist unless ESPs and their
20 foreign affiliates are subject to the same affiliate transaction rules applicable to
21 incumbent utilities and their affiliate is erroneous. To begin with, most of the ESPs
22 are not affiliated with an incumbent utility. Second, there is no risk of ESPs with
23 out-of-state affiliates improperly sharing information regarding Arizona consumers,
24 subsidizing competitive activities with revenues derived from Arizona consumers or
25 otherwise abusing market power.

26 This does not mean that the Commission lacks authority to impose

1 conditions on ESPs. The Commission could impose bonding requirements on ESPs
2 operating in Arizona even if they differ from those in other states. Similar
3 restrictions of local interest that do not impact interstate commerce may be
4 specifically identified and implemented through certificates of convenience and
5 necessity.

6 Subsection (A)(7)(a) (p. 86)

7 **Restore** the following sentence:

8 Transfers from an affiliate to its affiliated Utility
9 Distribution Company shall be priced at the lower of fully
10 allocated cost or fair market value.

11 This sentence should not be deleted. Transactions between the utility and
12 its affiliate offer a principal area for abuse and the Commission must be very
13 specific regarding acceptable transactions. Just as it is very important for the
14 Commission to define pricing for transactions running from the utility to its affiliate,
15 it is equally important to do the same with respect to the pricing of transactions
16 from the affiliate to the utility. Although the rules as modified address cross-
17 subsidization in general, the deleted provision provides clear direction regarding
18 certain discrete transactions.

18 Subsection (A)(8) (p. 87)

19 **Restore** the following language at the end of the last sentence:

20 . . . and shall not be provided access to confidential utility
21 information.

22 This clause should be added back. APS argued that the clause should be
23 deleted because it is redundant with the requirements set forth in Subsection (B).
24 The Hearing Officers' expressed reasons for deletion indicate disagreement with
25 APS' assertion. Nevertheless, the Recommended Rules reflect the deletion.
26 Obviously, if the Commission does not agree with APS, then this language should

1 not have been deleted.

2 The Commission would be correct in disagreeing with APS. R14-2-1617(B)
3 is directed at customer specific information whereas Subsection (A)(8) is directed
4 at confidential information that is not customer specific. An example would be
5 advance information that the utility received regarding potential new developments
6 that might not be considered customer specific. The utility should not be allowed
7 to provide that information to its affiliate.

8 Subsection (C)(1) (p. 87)

9 **Modify** this subsection as follows:

10 Any list of Electric Service Providers provided by an
11 Utility Distribution Company to its customers which
12 includes or identifies the Utility Distribution Company's
13 competitive electric affiliates must include or identify non-
14 affiliated entities included on the list of those Electric
15 Service Providers authorized by the Commission to
16 provide service within the Affected Utility's or Utility
17 Distribution Company's certificated area. The list must
18 be prepared in a way that does not identify any ESP
19 relationship or emphasize any particular ESP in any way.
20 The Commission shall maintain an updated list of such
21 Electric Service Providers and make that list available to
22 the public ~~Affected Utilities or Utility Distribution
23 Companies~~ at no cost.

18 The first change is necessary to make sure that the utility remains neutral
19 with respect to information it disseminates. This provision will help to ensure
20 neutrality. The second change merely makes clear that the list is available at no
21 cost to all who request it and not just to the entities specifically mentioned. This
22 clarification is presumably consistent with the Commission's intent.

23 Subsection (C)(2) (p. 87)

24 **Modify** this subsection as follows:

25 An Utility Distribution Company may provide non-public
26 supplier information and data, which it has received from
unaffiliated suppliers, to its competitive electric affiliates

1 or nonaffiliated entities only if the Affected Utility or
2 Utility Distribution Company receives prior written
authorization from the supplier.

3 This will eliminate potential problems regarding whether consent was given
4 and will aid in the investigation of complaints.

5 Subsection (C)(3) (pp. 87-88)

6 **Delete** "~~objective, factual and~~" from the last sentence of this subsection.

7 The last sentence was added at APS' request to address concerns regarding
8 employees referring customers to the Commission or the Better Business Bureau.
9 While this is a legitimate concern, the proposal goes much too far. Allowing the
10 employee to provide publicly available information is all that is required. Giving the
11 utility unfettered discretion to decide what is "objective" or "factual" render the
12 protections intended in the rest of the subsection meaningless.

13 Subsection D (p. 88)

14 **Add** the following as the second sentence of the introductory language of this
15 subsection:

16 An Affected Utility, Utility Distribution Company, or their
17 affiliates shall not provide their affiliates, or customers of
18 their affiliates, any preference over non-affiliated suppliers
or their customers in the provision of services.

19 This sentence is proposed for deletion in the Recommended Rules because it
20 is supposedly covered elsewhere. AECC respectfully submits that if there is
21 language elsewhere in the Recommended Rules that makes the provision in the
22 second sentence redundant, the location of such language is not clear. The deleted
23 language contains a specific prohibition on preferences. In contrast, the first
24 sentence of this subsection addresses a different issue, i.e., the possibility of a
25 utility giving the false impression that preferences may be given. Therefore, since
26

1 this subsection deals with nondiscrimination, it is an appropriate place for the
2 prohibition to be stated even if it is also stated elsewhere in the rule.

3 Subsection (D)(4) (pp. 88-89)

4 **Replace "noncompetitive"** in the last line sentence of this subsection with
5 **"competitive"**.

6 The Recommended Rules insert the word "Noncompetitive" twice in this
7 subsection. As reworded, it now references noncompetitive services being provided
8 by a competitive affiliate. The second use of "noncompetitive" should be deleted
9 and "competitive" substituted in its place.

10 Subsection (E) (p. 89)

11 **Replace** the fourth sentence in this subsection with the following:

12 An Affected Utility or Utility Distribution Company shall
13 have a compliance audit prepared by an independent
14 auditor in the 1st quarter after the end of each calendar
15 year following the implementation of competition
pursuant to R14-2-1602, and every third year thereafter
~~until December 31, 2002.~~

16 The audit requirement should be a continuing one and that requirement
17 should be clear from the outset.

18 RESPECTFULLY SUBMITTED this 17th day of February, 1999.

19 FENNEMORE CRAIG, P.C.

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21 By 

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