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BEFORE THE ARIZONA CORPORATION COMMISSION

EXCEPTION

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

DOCUMENT CONTROL

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

DOCKET NO. RE-00000C-94-0165

**SUPPLEMENTAL AND RESTATED EXCEPTIONS
OF ARIZONA PUBLIC SERVICE COMPANY TO
AMENDED RECOMMENDED ORDER ON THE ELECTRIC
COMPETITION RULES, A.A.C. R14-2-1601, ET SEQ.**

Arizona Public Service Company ("APS" or "Company") hereby provides to the Arizona Corporation Commission ("Commission") a supplement to and partial restatement of its exceptions dated February 17, 1999. Such supplemental filing is necessitated by the issuance by the Commission's Hearing Division on March 12, 1999 of certain amendments to its Recommended Opinion and Order of February 5, 1999, hereinafter referred to as the "March 12th Recommended Order" and the "February 5th Recommended Order," respectively.¹

I. INTRODUCTION

As was noted in the Company's February 17th exceptions to the February 5th Recommended Order, many of the issues raised in its Comments of January 29, 1999, were either

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¹ The March 12th Recommended Order was actually docketed on March 22, 1999. However, such order merely incorporated the amendments to the February 5th Recommended Order that had been previously issued on March 12, 1999, and thus is more properly thought of as the March 12th Recommended Order.

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1 left unaddressed by such Order or were not adequately addressed.² Said exceptions and Comments
2 are hereby incorporated by reference. Subsequent to the filing of exceptions by the Company and
3 a number of other parties, the March 12th Recommended Order was issued by the Hearing
4 Division.

5 APS believes that the Electric Competition Rules proposed by the March 12th
6 Recommended Order contain both deficiencies carried over from the Suspended Rules, and in
7 some instances, issues seemingly resolved in a reasonable manner by the February 5th
8 Recommended Order, only to be resurrected by changes made in the March 12th Recommended
9 Order. Some of these latter deficiencies require substantive changes to the Suspended Rules,
10 which if not made as part of the proposed amendments to such rules presently under consideration,
11 will be difficult to adopt later without further delaying the advent of competition.

12 The Company therefore urges the Commission to modify the March 12th Recommended
13 Order and its proposed revisions to the Rules to adopt the Company's supplemental comments as
14 set forth below and in Exhibit A, attached hereto.

15 **II. DEFINITION OF "COMPETITIVE SERVICES"**

16 APS has previously noted that the overly inclusive definition of this term in A.A.C. R14-2-
17 1601(5) would result in APS being unable to provide what have traditionally been unregulated
18 services (e.g., DSM). The Recommended Order itself recognizes that some mitigation of stranded
19 cost may be accomplished by offering a "wider scope of permitted regulated utility services for
20 profit." A.A.C. R14-2-1607(A). The proposed definition of "Competitive Services," however,
21 would all but eliminate the possibility of an Affected Utility offering such additional services.

22 APS suggests that the Commission adopt a more precise definition of the term
23 "Competitive Services" that is both self-sustaining and limited to those formerly-regulated aspects
24

25 ² APS and other interested parties were asked by Procedural Order dated January 26, 1999 to submit written
26 comments on that version of the Electric Competition Rules which had been suspended by virtue of Decision No.
61311 (January 11, 1999), hereinafter referred to as the "Suspended Rules."

1 of retail electric service that may now be provided by an ESP. APS would propose the following
2 language:

3 “Competitive Services” means the provision of retail electric Generation, Meter
4 Service [other than those aspects of Meter Service described in R14-2-1613(K)],
5 Meter Reading Service, or electric billing and collection services (other than joint
6 or consolidated billing provided by an Affected Utility or Utility Distribution
7 Company pursuant to a tariff). It does not include Standard Offer Service or any
8 other electric service defined by this article as noncompetitive.

9 This language recognizes the formerly-regulated retail electric services, which are also specifically
10 identified in R14-2-1613(O), while not overly restricting *any* party from offering unregulated
11 services that may emerge to the benefit of consumers.

12 **III. DEFINITION OF “STANDARD OFFER SERVICE”**

13 The proposed amendment to the definition of Standard Offer Service in R14-2-1601(34)
14 appears to define “Standard Offer Service” to categorically exclude customers whose annual usage
15 is more than 100,000 kWh. Such wording could arguably require *all* such customers (presumably
16 after the phase-in period ends) to switch *en masse* to Competitive Service—an undesirable and
17 perhaps impossible scenario. This result does not appear to be contemplated by the discussion of
18 the proposed revision in the Concise Explanatory Statement and does not reflect the amendments
19 to A.R.S. § 40-202(B)(5) in H.B. 2663, which merely limited the Provider of Last Resort
20 *obligation* to customers with annual usage of 100,000 kWh or less, but did not otherwise restrict
21 the availability of Standard Offer Service to these larger customers.

22 APS believes that the decision to remain on an otherwise available Standard Offer Service
23 or opt for Competitive Service should generally lie with the customer, and not be dictated by the
24 Rules. Accordingly, APS urges the Commission to delete the phrase “whose annual usage is
25 100,000 kWh or less” from R14-2-1601(34), but incorporate the limitation into R14-2-1606(A) as
26 provided in Exhibit A hereto.

IV. SEPARATION OF COMPETITIVE SERVICES

Rule R14-2-1616 still requires Affected Utilities to “spin off” to affiliates not just

1 competitive generation assets, but *all* Competitive Services. APS urges the Commission to limit
2 the required separation of services from an Affected Utility or UDC to competitive generation
3 only. There has never been any evidence or testimony presented to the Commission that the
4 compelled separation of distribution-related activities such as metering and billing from a UDC is
5 necessary, appropriate, or in any way benefits consumers or the competitive marketplace (as
6 opposed to metering vendors and independent billing service providers). The CES in the
7 Recommended Order does not evaluate APS' comments on the inappropriate and unnecessary
8 burdens and limitations imposed by requiring separation of all Competitive Services. Indeed, such
9 compelled separation of non-generation services is, understandably, unprecedented anywhere in
10 the country and cannot be rationally justified. APS thus requests that the Commission consider
11 APS' analysis and adopt the proposed changes to Rule R14-2-1616 set forth in Exhibit A hereto.

12 V. AFFILIATE TRANSACTION RULES

13 A. Applicability of Rules:

14 In the February 5th Recommended Order, the affiliate provisions of the Suspended Rules
15 were equally applied to both Affected Utilities and other ESPs having electric distribution
16 affiliates not subject to Commission jurisdiction. This has long been the position of APS and
17 other Affected Utilities. For unexplained reasons, the March 12th Recommended Order retreats
18 from this "level playing field" and again singles out Affected Utilities, leaving them and their
19 affiliates at a significant competitive disadvantage. The Commission should restore the language
20 from the February 5th Recommended Order.

21 B. Scope of Rules:

22 The affiliate transaction provisions in A.A.C. R14-2-1617 are confusing, contradictory, and
23 overly burdensome. Rule R14-2-1617(A)(2) provides that a UDC "may share with its affiliates
24 joint corporate oversight, governance, support systems and personnel." Section 1617(A)(6) states
25 that, *except as provided by Section 1617(A)(2)*, a UDC and its affiliate cannot jointly share
26 directors and officers. However, because directors and officers are, by definition, providing

1 governance and joint corporate oversight, the express prohibition in Section 1617(A)(6) is either
2 meaningless or completely negates the intended exception. Indeed, few American corporations,
3 competitive or regulated, would make significant investments in a subsidiary and not also seek to
4 control the strategic direction of the subsidiary and ensure that the parent's investment is being
5 appropriately utilized. Moreover, no party has presented evidence that improper cross-
6 subsidization or sharing of customer-specific confidential information would reasonably result
7 from the sharing of such *senior* personnel—the only realistic threat of such conduct is presented by
8 lower-level staff that actually have ready access to such information and are involved in day-to-day
9 transactions, not those responsible for general policy and oversight.

10 Additionally, APS previously recommended that the affiliate transaction pricing provisions
11 in R14-2-1617(A)(7) provide that non-tariffed items regularly sold by a UDC should be transferred
12 at the market price. The proposed revisions to this rule still provide that the transfer price shall be
13 the *higher* of market price or fully allocated cost. For goods and services that are regularly and
14 routinely sold by a UDC, requiring cost allocation determinations each time that a transfer to an
15 affiliate occurs is overly burdensome and unnecessary. There should not be one pricing rule when
16 dealing with an affiliate and a different one when dealing with a non-affiliate. If the objective of
17 the rule is to prevent a UDC from unfairly dealing with a competitive affiliate, transferring a good
18 or service at the same price to all comers satisfies that objective. Raising additional regulatory
19 hurdles when the transfer involves a UDC's competitive affiliate simply places the affiliate at an
20 even greater competitive disadvantage to other ESPs. Accordingly, APS requests that the
21 Commission revise proposed rule R14-2-1617 as suggested in Exhibit A.

22 VI. CONSUMER DISCLOSURE

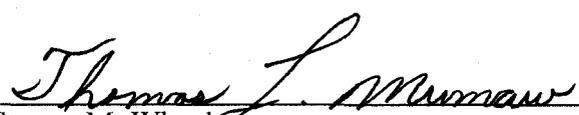
23 In the form of proposed rule R14-2-1618 suggested in the February 5th Recommended
24 Order, the Hearing Officers adopted APS' suggestion that information disclosures be limited to
25 residential customers. The residential customer limitation was inserted into Section 1618(A), but
26 appeared to have been inadvertently omitted from Section 1618(E) and (F)(1). When this

1 omission was brought to the Commission's attention, the subsequently revised rule per the March
2 12th Recommended Order not only eliminated the reference to residential customers altogether but
3 also the 1MW limitation that had existed in the Suspended Rules.

4 Moreover, as onerous as these disclosure and labeling requirements are to ESPs, they are
5 particular inappropriate for Standard Offer Service. Standard Offer Service is provided per
6 specific commission - approved tariffs prescribing rates, terms and conditions that are uniformly
7 applicable to all customers. APS has always provided its customers copies of the relevant tariff
8 upon request. Applying Rule 1618 to Standard Offer Service simply piles another administrative
9 cost on that service at a time when the Commission is actively seeking to reduce and stabilize the
10 rates for customers not choosing to participate in the competitive electric market.

11 **RESPECTFULLY SUBMITTED** this 7th day of April, 1999.

12 **SNELL & WILMER L.L.P.**

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EXHIBIT A

APS' SUGGESTED CHANGES TO PROPOSED ELECTRIC COMPETITION RULES

R14-2-1601

5. "Competitive Services" means the provision of retail electric Generation, Meter Service (other than those aspects of Meter Service described in R14-2-1613(K)), Meter Reading Service, or electric billing and collection services (other than joint or consolidated billing provided by an Affected Utility or Utility Distribution Company pursuant to a tariff). It does not include Standard Offer Service or any other electric service defined in this article as noncompetitive. ~~all aspects of retail electric service except those services specifically defined as "Noncompetitive Services" pursuant to R14-2-1601(27) or noncompetitive services as defined by the Federal Energy Regulatory Commission.~~
34. "Standard Offer Service" means Bundled Service offered by the Affected Utility or Utility Distribution Company to ~~all~~ consumers in the Affected Utility's or Utility Distribution Company's service territory ~~whose annual usage is 100,000 kWh or less~~ at regulated rates, including metering, meter reading, billing, collection services, demand side management services including but not limited to time-of-use, and consumer information services. All components of Standard Offer Service shall be deemed noncompetitive as long as those components are provided in a bundled transaction pursuant to R14-2-1606(A).

R14-2-1606

- A. On the date its service area is open to competition pursuant to R14-2-1602, each Affected Utility or Utility Distribution Company shall make available Standard Offer Service and Noncompetitive Services at regulated rates. After January 1, 2001, Standard Offer Service and Noncompetitive Services shall be provided by Utility Distribution Companies who shall also act as Providers of Last Resort for any customer whose annual usage is 100,000 kWh or less.

R14-2-1616

A. All competitive generation assets and ~~competitive services~~ shall be separated from an Affected Utility prior to January 1, 2001. Such separation shall either be to an unaffiliated party or to a separate corporate affiliate or affiliates.

B. Affected Utilities or Utility Distribution Companies may provide other (non-generation) Competitive Services through an affiliate, but are not required to do so. If an Affected Utility or Utility Distribution Company chooses not to provide non-generation Competitive Services through a separate affiliate, the Affected Utility or Utility Distribution Company shall separately account for such Competitive Services.

BC. After January 1, 2001, an Affected Utility or Utility Distribution Company shall not provide competitive retail Generation Competitive Services as defined in R14-2-1601(16), except as otherwise authorized by these rules or by the Commission.

R14-2-1617

A. Separation

An Affected Utility or Utility Distribution Company and its affiliates shall operate as separate corporate entities. For the purposed of this Rule, Utility Distribution Company also includes any affiliate of an electric Service Provider that would be deemed a Utility Distribution Company if operating in Arizona and subject to the Commission's jurisdiction. Books and records shall be kept separate, in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Principles (GAAP). The books and records of any Electric Service Provider that is an affiliate of an Affected Utility or Utility Distribution Company shall be open for examination by the Commission and its staff consistent with the provisions set forth in R14-2-1614. All proprietary information shall remain confidential.

...

6. Except as provided in subsection A(2), an Utility Distribution Company and its competitive electric affiliate shall not jointly employ the same employees. This rule does not applyes to Boards of Directors and corporate officers. ~~However, any board member or corporate officer of a holding company may also serve in the same capacity with the Affected Utility or Utility Distribution Company, or its competitive electric affiliates, but not both.~~ Where the Affected Utility Distribution Company is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for its competitive electric affiliates, the prohibition outlined in this section shall only apply to competitive electric affiliates that operate within Arizona.
7. Transfer of Goods and Services: To the extent that these rules do not prohibit transfer of goods and services between an Utility Distribution

Company and its competitive electric affiliates, all such transfers shall be subject to the following price provisions:

- a. Goods and services provided by an Utility Distribution Company to a competitive electric affiliate shall be transferred at the price and under the terms and conditions specified in its tariff. If the goods or service to be transferred is a non-tariffed item and is regularly sold by the Utility Distribution Company to unaffiliated third parties, the transfer price shall be the ~~higher of fully allocated cost or the fair~~ market price. If market price cannot be easily determined by the Utility Distribution Company or if a good or service is not regularly offered to third parties (e.g., shared service), the transfer price should not be less than the fully allocated cost of the good or service.
- b. Goods and services produced, purchased or developed for sale on the open market by the Utility Distribution Company will be provided to its competitive electric affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise permitted by these rules or applicable law.

R14-2-1618

E. Each Competitive Load-Serving Entity shall prepare a statement of its terms of service that sets forth the following information:

1. Actual pricing structure or rate design according to which the residential customer with a load of less than 1 MW will be billed, including an explanation of price variability and price level adjustments that may cause the price to vary;
2. Length and description of the applicable contract and provisions and conditions for early termination by either party;
3. Due date of bills and consequences of late payment;
4. Conditions under which a credit agency is contacted;
5. Deposit requirements and interest on deposits;
6. Limits on warranties and damages;
7. All charges, fees, and penalties;
8. Information on consumer rights pertaining to estimated bills, 3rd party billing, deferred payments, and rescission of supplier switches within 3 days of receipt of confirmation;
9. A toll-free telephone number for service complaints;
10. Low income programs and low income rate eligibility;
11. Provisions for default service;
12. Applicable provisions of state utility laws; and
13. Method whereby customers will be notified of changes to the terms of service.

F. The consumer information label, the disclosure report, and the terms of service shall be distributed in accordance with the following requirements:

1. Prior to the initiation of service for any retail residential customer,

2. Prior to processing written authorization from a retail residential customer to change Electric Service Providers,
3. To any person upon request,
4. Made a part of the annual report required to be filed with the Commission pursuant to law.
5. The information described in this subsection shall be posted on any electronic information medium of the Load-Serving Entities subject to this rule.