

EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

1999 APR 12 P 4: 38

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

AZ CORP COMMISSION
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

ASARCO INCORPORATED, CYPRUS CLIMAX METALS COMPANY,
ENRON CORP. AND ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION'S
SUPPLEMENTAL EXCEPTIONS TO RECOMMENDATIONS REGARDING
STRANDED COST ORDER AND ELECTRIC COMPETITION RULES

April 12, 1999

Arizona Corporation Commission

DOCKETED

APR 12 1999

DOCKETED BY

Submitted by:

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

1 ASARCO, Incorporated, Cyprus Climax Metals Company, Enron Corp., and
2 Arizonans for Electric Choice and Competition¹ (collectively referred to herein as
3 "AECC") hereby submit comments in the form of supplemental exceptions to the
4 March 22, 1999 amended recommendations issued by the Chief Hearing Officer in
5 this docket.

6 **INTRODUCTION**

7 On March 22, 1999, the Hearing Division of the Arizona Corporation
8 Commission issued amended recommendations for the Stranded Cost Order and the
9 Electric Competition Rules. These revised proposals incorporate many of the
10 exceptions filed by the various stakeholders to the February 5, 1999 versions of the
11 proposed Stranded Cost Order and the proposed Electric Competition Rules. These
12 revised proposals further promote the implementation of the framework for
13 Arizona's transition to a competitive market for the generation of electric power.
14 However, further changes are still required to ensure an equitable distribution of the
15 benefits competition offers to Arizona's electric consumers. These additional
16 changes are contained in the proposed amendments set forth in Exhibit A attached
17 hereto. Most of these proposed amendments are also discussed hereinbelow.

18 **AMENDED RECOMMENDATIONS FOR STRANDED COST ORDER**

19 On the whole, the amended recommendations regarding the Stranded Cost
20 Order eliminate much of the confusion and inconsistency regarding the recovery of

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 stranded costs. For example, the amended recommendations ensure that the
2 Affected Utilities' recovery of a CTC will be paid by all customers purchasing
3 generation services based on the amount of generation purchased. Similarly, the
4 revisions retain the assurance that appropriate mitigation incentives will be taken by
5 Affected Utilities as stranded cost recovery is scheduled to cease within five years.
6 In addition, a fifth option has been added to the proposed Stranded Cost Order
7 allowing Affected Utilities to submit alternative proposals for stranded cost recovery
8 that may better serve the public interest given the utilities' individual circumstances.

9 The most significant flaw in the amended recommendations for the Stranded
10 Cost Order is the new provision that would allow the Affected Utilities to use
11 voluntary reductions in the Standard Offer rates to "offset stranded cost recovery at
12 the end of five years." See proposed Stranded Cost Order at p. 3, ls. 5-7. The
13 inexplicable inclusion of this new language is problematic. It is entirely unclear what
14 type of "offset" is intended. Will Affected Utilities be allowed to continue stranded
15 cost recovery after five years if they voluntarily reduce Standard Offer. This
16 provision apparently shifts the benefits of competition from those taking the risk of
17 going to competition to those remaining on Standard Offer service.

18 **AECC'S ADDITIONAL RECOMMENDATIONS FOR THE STRANDED COST ORDER**

19 In addition to deleting the provision regarding "offsetting" stranded cost
20 recovery against voluntary reductions in Standard Offer rates, the proposed Stranded
21 Cost Order should be modified as follows:

- 22 • Add a provision making it clear that nothing in the Stranded Cost Order is
23 intended to extend the term of an Affected Utility's regulatory asset
24 recovery beyond its current Commission-approved recovery schedule,
- 25 • Add a provision prohibiting the recovery of stranded costs from resulting in
26 a rate increase for any electric consumer.

1 **AMENDED RECOMMENDATIONS TO ELECTRIC COMPETITION RULES**

2 In the amended recommendations for the Electric Competition Rules, the
3 Hearing Division has eliminated several problems that were present in the prior
4 version of the proposed Rules. For one thing, the amended recommendations delete
5 provisions within the Rules' affiliate transaction provisions whereby the Commission
6 would be attempting to unlawfully extend its regulatory jurisdiction outside the State.
7 As was pointed out by all but the chief proponents of such "out-of-state" regulation
8 -- APS and TEP, the Commission lacks legal authority to regulate the affiliates of
9 ESPs in other states. Moreover, because there are no "market power" or improper
10 cross-subsidization concerns associated with out-of-state affiliates, provisions
11 regulating out-of-state affiliates are entirely unnecessary.

12 The amended recommendations also eliminate language in the definition of
13 "Standard Offer Service" that limited such service to customers with an annual usage
14 of 100,000 kwh or less. This provision had the apparently unintended effect of
15 leaving those customers with an annual consumption above 100,000 kWh who, for
16 whatever reason, are not eligible for competition during the transition period,
17 without any option for purchasing electric power during the transition period.

18 Under the amended recommendations, Affected Utilities are required to file
19 for rate increases before any rate increase can go into effect for Standard Offer
20 customers and the CTC charge will have to be clearly identified to all customers,
21 including those remaining on Standard Offer Service. The amended
22 recommendations to the Rules also require Affected Utilities and Utility Distribution
23 Companies to offer distribution services to Load-Serving Entities on the same terms
24 such services are provided to themselves at Noncompetitive tariffed rates.

25 **AECC'S ADDITIONAL RECOMMENDATIONS FOR ELECTRIC COMPETITION RULES**

26 While the amended recommendations for the Electric Competition Rules

1 address several significant aspects of the Rules, there are a number of additional
2 changes that must be made before the Electric Competition Rules can provide the
3 necessary framework for the transition to competition. These additional changes are
4 described as follows:

- 5 • Add a "buy-through" provision. As recognized by the Legislature when it
6 adopted HB 2663, requiring Load-Serving Entities to allow for buy-through
7 services provides an important safety net for customers who have acted in
8 reliance on the timely introduction of full and open retail access to electric
9 generation.
- 10 • Add a date certain for the commencement of competition, which date
11 should be no later than October 1, 1999. Without a date certain, the
12 proceedings will continue to drag out and there will be no competition even
13 by January 1, 2000, a full year after the start of competition in the public
14 power entities' service territories.
- 15 • Accelerate the transition to competition by increasing the amount of
16 capacity each Affected Utility is required to make available to 30% of the
17 1998 system retail peak demand. In light of the delays experienced, it is
18 now appropriate to use a date and percentage which increases the levels
19 of competition during the transition phase.
- 20 • Allow consumers to request direct access at least 180 days before the
21 effective date that direct access service would begin. The value of the
22 180 day notice is that it provides some opportunity for a contract
23 customer to "get in line" for retail access, since contract customers will
24 otherwise be impeded from participating on a first-come, first-served
25 basis. Even a 180 day notice provision will not provide an equal
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opportunity for retail access for those contract customers whose contracts expire in the second year of the phase-in.

- Reinststate the "self-aggregation" provisions allowing consumers to self-aggregate loads in order to become eligible for direct retail access and eliminate the "single premise" requirement in R14-2-1604.A. The deletion of the "self-aggregation" provision from the Rules was wrongly attributed to AECC. This language is necessary to allow individual customers with multiple locations to "self-aggregate" in order to obtain eligibility. Similarly, insertion of the phrase "single premise" precludes individual customers with multiple sites from aggregating these loads in order to be eligible for competition.
- Allow all loads served by Load Serving Entities under individual contracts to be eligible for competitive services upon the expiration of such contracts. Currently, the Rules discriminate against customers presently receiving energy and power under individual contracts with Affected Utilities. If these customers have to pay Standard Offer rates, those Standard Offer payments will result in huge profits for Affected Utilities.
- Provide for the reallocation of unused load reserved for residential capacity. The reservation of a substantial portion of the total competitive capacity as residential capacity as required under R14-2-1604(B)(1) makes little practical sense. To date, despite the filing of several competitive CC&N applications by Electric Service Providers, none of these entities have requested authority to serve residential customers. Therefore, after an appropriate time, this capacity, if not utilized for service to residential customers should be reallocated to those customers who can receive competitive energy services from certified Electric Service Providers. A

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similar approach was suggested by AECC and APS and adopted for use in the Salt River Project service territory.

- Delete the word "tariffed" from R14-2-1607. The "proportionality" provision of the Rules protects customers against cost shifting by ensuring that the recovery of stranded cost after the introduction of competition will be in substantially the same proportion as the recovery of stranded costs under current rates. Use of the word "tariffed" in this provision, could assign proportionate responsibility for stranded costs based only on certain tariffs, as distinct from individual contracts between an Affected Utility and its customer. Although a contract customer's contract is their tariff, any effort to discriminate against these customers is inequitable. If competition is to be fair and effective, it is essential that the CTC for all customers be based on the contribution to such costs that customer now pays to the Affected Utility under current regulation.

CONCLUSION

As stated, with the exception of those provisions addressed herein, the revisions adopted in the Chief Hearing Officer's amended recommendations for the Stranded Cost Order and Electric Competition Rules will enhance Arizona's transition to a competitive market for electric power generation. Consequently, the amended recommendations should be adopted by the Commission subject to AECC's supplemental exceptions herein and the inclusion of the additional amendments attached hereto and recommended by the AECC.

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1 RESPECTFULLY SUBMITTED this 12th day of April, 1999.

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PROPOSED AMENDMENTS TO RECOMMENDED STRANDED COST ORDER¹

p. 3, l. 9:

INSERT "in accordance with the Electric Competition Rules (A.A.C. R14-2-1601, et seq.)," before "all existing and future customers should bear"

p. 3, l. 14½:

DELETE "If an Affected Utility believes other costs have increased to offset the removal of the regulatory assets recovery³, it shall file a rate case a least a year before regulatory assets are extinguished." after "reflect the removal of the regulatory assets."

p. 3, l. 19:

DELETE "non-essential" after "divesting/auctioning off all"

p. 3, l. 23-p.4, l. 1:

DELETE "If the resulting customer charge would result in an increase in the standard offer rate, the Affected Utility will have to defer those excess amounts for future periods without any carrying charge." after "carrying charges on the unamortized balance."

p.3, l. 25:

INSERT "However, nothing in this section is intended to extend the term of an Affected Utility's regulatory asset recovery beyond its current Commission-approved recovery schedule." after "a total of ten years."

¹ These amendments are proposed to the version of the recommended Stranded Cost Order attached to the Chief Hearing Officer's Procedural Order dated March 22, 1999.

**PROPOSED AMENDMENTS TO RECOMMENDED
ELECTRIC COMPETITION RULES¹**

p. 34, § R14-2-210 (Billing and Collection), E (Meter Error Corrections)

INSERT "residential customer" after "If a tested" and "if a tested commercial or industrial customer meter is found to be more than 1% in error" after "more than 3% in error," in first sentence of this section.

p. 52, § R14-2-1601 (Definitions)

INSERT "4. "Buy-through" refers to a purchase of electricity by a Load-Serving Entity at wholesale for a particular retail consumer or aggregate of consumers or at the direction of a particular retail consumer or aggregate of consumers." after "energy and power to consumers." in § R14-2-1601.3.

p. 53, § R14-2-1601.9 (Definitions)

INSERT "or the customer" after "the customer's Electric Service Provider" in the last line of this section.

p. 55, § R14-2-1601.27 (Definitions)

DELETE "Federal Energy Regulatory Commission-required" after "Standard Offer Service transmission and" from the second and third lines of this section.

¹ These amendments are proposed to the version of the recommended Electric Competition Rules attached to the Chief Hearing Officer's Procedural Order dated March 22, 1999. Page numbers used herein refer to the page numbers in Appendix A to the recommended order regarding the Electric Competition Rules attached to the March 22, 1999 Procedural Order.

INSERT "any" before "ancillary services" and "deemed to be non-competitive by the Federal Energy Regulatory Commission." after "ancillary services".

p. 57, § R14-2-1601.35 (Definitions)

DELETE "d. Other transition and restructuring costs as approved by the Commission" from this section.

p. 58, § R14-2-1601.39 (Definitions)

INSERT "Must-Run Generation" after "as generation, transmission, distribution" in this section

p. 58, § R14-2-1602.A (Commencement of Competition)

INSERT "which date shall be no later than October 1, 1999." after "and Unbundled Tariff proceeding"

pp. 62-63, § R14-2-1603.J (Certificates of Convenience and Necessity)

REPLACE the following time frames in this section as indicated:

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 . . .

p. 64, § R14-2-1604.A (Competitive Phases)

DELETE "20%" after "at least" and "1995" after "of its" in the first sentence of this section.

INSERT "30%" after "at least" and "1998" after "of its" in the first sentence of this section.

p. 64, § R14-2-1604.A.2 (Competitive Phases)

DELETE "During 1999 and 2000,an" before "customers" and "single premise" after "customers with" in the first sentence of this section.

INSERT "Self-aggregation is also allowed pursuant to the minimum and combined load demands set forth in this rule." after "eligible for competitive electric services." In this section.

DELETE "20%" after "at least" and "1995" after "of the Affected Utility's" in the third sentence of this section.

INSERT "30%" after "at least" and "1998" after "of the Affected Utility's" in the third sentence of this section.

p. 65, § R14-2-1604.A (Competitive Phases)

INSERT "4. Notwithstanding the limitation to at least 30% of the Affected Utility's 1998 system peak demand provided for in paragraphs 1 and 2 of this section, effective January 1, 1999, all loads served by Load Serving Entities under individual contracts will be eligible for competitive services upon the expiration of such contract." after "within its service territory." In §

R14-2-1604.A.3.

p. 65, § R14-2-1604.B (Competitive Phases)

DELETE "20%" after "of the minimum" and "1995" after "of" in the first sentence of this section.

INSERT "30%" after "of the minimum" and "1998" after "of" in the first sentence of this section

p. 67, § R14-2-1604.B (Competitive Phases)

INSERT "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 customers pursuant to R14-2-1604.B.1 which is not being used for the provision of competitive services to residential customers. Such pro rata reallocation shall also occur on April 30, 2000 and October 31, 2000." after "from participating residential customers." in § R14-2-1604.B.5.d.

p. 67, § R14-2-1604. (Competitive Phases)

INSERT "F. From and after January 1, 2001, Load Serving entities shall provide for buy-through service to any electric consumer on request at no additional charge other than charges for required transmission, distribution, or ancillary services and any non-bypassable charges that would otherwise apply." after "may participate in the competitive market" in § R14-2-1604.E.

p. 69, § R14-2-1606.B (Services Required to be Made Available)

DELETE "the open market" after "shall be acquired through" in the first sentence of this section.

INSERT "competitive bidding" after "shall be acquired through" in the first sentence of this section.

p. 74, § R14-2-1607.F (Recovery of Stranded Cost of Affected Utilities)

DELETE "supplier." after "purchased from any" in the first sentence of this section.

INSERT "Electric Service Provider." after "purchased from any" in the first sentence of this section.

p. 74, § R14-2-1607.G (Recovery of Stranded Cost of Affected Utilities)

DELETE "tariffed" after "specific company's current" in the first sentence of this section.

p. 74, § R14-2-1607 (Recovery of Stranded Cost of Affected Utilities)

INSERT "H. The Commission may order an Affected Utility to file estimates of Stranded Cost and mechanisms to recover or, if negative, to refund Stranded Cost." after "magnitude of Stranded Cost." in § R14-2-1607.I.

pp. 89, § R14-2-1612.K.1 (Service Quality, Consumer Protection, Safety,

and Billing Requirements)

DELETE "metering or" after "Electric Service Provider who provides" in the first sentence of this section.

pp. 90-91, § R14-2-1612.K (Service Quality, Consumer Protection, Safety, and Billing Requirements)

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

DELETE "11. Transmission primary voltage Current Transformers and Potential Transformers may be owned by the Affected Utility or Utility Distribution Company only."