

May 3, 1999

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three months prior to consideration by the Commission. As explained to all present by the Chief Hearing Officer, a procedural conference was held January 22, 1999, and all interested parties were given an opportunity to file proposed changes to the rules. After evaluation by the Hearing Division, a rule proposal was issued February 5, 1999. Exceptions to the proposed rules were received from all interested parties. After consideration of the Exceptions, the Hearing Division incorporated further changes to the proposed rulemaking. That process allowed the Hearing Division to complete their review required by the Administrative Procedure Act.

The process was directed by an independent body, the Hearing Division, open to all parties, with all documents filed for public review in Docket Control. We had no complaints on due process or ex parte communications. We were not sued by the Attorney General nor was our action stayed by the Supreme Court.

But that was not the case in 1998, when you and former Commissioner Jennings failed to operate within the rule of law. The public record established during your 1998 process for revising the electric rules and adopting the Stranded Cost Order is replete with concerns by the parties of your failure to comply with rule and law. Consider the following comments made to you in 1998 on your process:

Robert S. Lynch
Arizona Transmission Dependant Utility Group
May 21, 1998 Letter to ACC Staff

I must say as a threshold matter giving people some 36 hours to react to what you label as "important issues" erodes the credibility of the process. If the Commission and/or the staff is truly interested in receiving meaningful comment from "stakeholders," then adequate time to do so seems imperative. (emphasis added) **Attachment 1**

Bill Meek
Arizona Utility Investors Association
May 21, 1998 Letter to ACC Staff

Did Mr. Bullis submit perjured testimony? What process produced this new position? How do we know when a staff position is real or just the *parlance du jour*?

In other words what are the ground rules around here? The members of AUIA are also Arizona taxpayers. They have the right to expect an open and lawful process and not one where the decisions are hatched in secret meetings...we have been cut out of whatever process has been under way. (emphasis added) **Attachment 2**

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Barbara Sherman, Arizona Consumers Council
Response to the Opinion and Order
Docketed May 29, 1998

We are concerned with the staff attempt to circumvent this Opinion and Order ...While small consumers are being shut out, large users have contracted for discounted electricity prices. It is imperative that the government agencies which are setting forth these policies that shut out small consumers, act to protect small consumers from paying for the discounts of these large users. (emphasis added)
Attachment 3

Craig A. Marks
Associate General Counsel
Citizens Utilities Company
May 14, 1998 Letter to ACC Staff

Citizens' fundamental concern with the Staff's proposal is the assertion that Staff intended to have the Hearing Officer's Recommended Order in the stranded cost proceeding "pulled," with Staff's recommendation substituted for that order. Citizens believes that such action would violate the fundamental principles of due process...If this Commission were to allow Staff to interfere with the process that is already in place, it would be a clear abuse of process. (emphasis added)
Attachment 4

Kenneth C. Sundlof, Jr.
Jennings, Strauss & Salmon
Counsel for SRP
May 22, 1998 Letter to ACC Staff

Although SRP is not a party, we are actively monitoring the stranded cost proceedings. The staff statement seems to bypass this entire process, especially as it purports to state positions of the Commission.
(emphasis added) **Attachment 5**

On June 22, 1998 you and former Commissioner Jennings adopted Decision No. 60977, the Stranded Cost Order. The Order in which after weeks of testimony, (you failed to attend) the record of evidence was ignored and you required utilities to divest their generation plant. In statements to questions from Commissioner Kunasek, your Staff admitted they had not advocated divestiture or the transfer of assets and rate reductions. Nor did your Staff provide any economic model on which they were able to quantify and analyze your policies on the Affected Utilities.

In fact, the record shows the strongest case for your adoption of a divestiture policy came from your ex parte discussion with Staff. Steven Dickerson admitted in statements to Commissioner Kunasek to providing a March 11, 1998 "Memorandum-For Internal Distribution" on market structure and divestiture. (Attachment 6) This memo was never part of the official record until Commissioner Kunasek discovered your practices. **(Attachment 7)** Only then, some two months after you and Staff had used it and the discussion around it, was it made a public document. It was you, Jennings, and select Staff that shut out the public from your deliberations. Consider the following comments on your process:

Craig A. Marks
Associate General Counsel
Citizens Utilities Company
May 14, 1998 Letter to ACC Staff

In addition, Citizens has concerns regarding ex-parte communications with Commissioners. At last week's meeting, the Executive Secretary presented Staff's proposal and indicated that all the Commissioners supported Staff's new proposal. From those remarks, Citizens has inferred that the Commissioners must have had either written or oral communication regarding this proposal. The Commission's rules prohibit "communication...concerning the substantive merits of a contested proceeding"...Under those circumstances, any communications with the Commissioners would be inappropriate as they are the final decision-makers in this matter. (emphasis added) **(See Attachment 4)**

Michael M. Grant
Gallagher & Kennedy
June 2, 1998 Letter to ACC Staff

I have reviewed Mr. Marks' letter to you of May 14, 1998.... I agree with the statements set forth there that "Staff intended to have the Hearing Officer's Recommended Order 'pulled,' with Staff's recommendation substituted for that order" and that Mr. Rose did indicate "the Commissioners supported Staff's new proposal." (emphasis added) **(Attachment 8)**

Subsequent to your adoption of the 1998 Stranded Cost Order, it appears as though your staff entered into closed-door negotiations with the Affected Utilities. According to the Attorney General's Verified Petition for Special Action and Writ of Mandamus:

(A) about October 30, 1998 the Attorney General's office became aware that some sort of deal had been reached between the Commission Staff and the two utilities. Between then and November 5, 1998, APS, Staff and TEP would not answer the Attorney General's questions about the Agreements.

On November 5, 1998, the Agreements were publicly announced, Commission Staff immediately issued a request for a procedural order that called for a hearing on the Agreements on November 20, 1998.

On November 24, 1998, the hearing officer issued a procedural order setting the hearing for December 7, 1998. The order specifically found that a shorter time to hearing would in fact "prejudice the intervenors."

The Attorney General prepared a motion for writ of mandamus and temporary restraining order the night of November 24, 1998. The Attorney General served his motion for a writ of mandamus/temporary restraining order on the Commission.

During the hearing at Superior Court on the matter, Commission counsel announced that two members of the Commission had voted to overrule the chief hearing officer's procedural order and grant Staff's request for a hearing on December 3, 1998. (emphasis added) (Attachment 9)

Your staff negotiated behind close doors for months then requested hearings within three weeks of announcing their Agreements. Once the Attorney General began legal action against your actions you overruled the hearing officer and gave the parties less time to review and prepare for hearings.

You did write to Jack Rose on November 30, 1998 and acknowledge "I understand that Staff negotiated on some nights and weekends for nearly four months in formulating this agreement." And that you remained "strongly committed to the scheduled introduction of competition beginning next year." Your letter also contains a number of questions, but no concern for due process. (emphasis added) (Attachment 10)

In 1999 we took three months to bring public documents to Open Meeting. In 1998 you and your staff tried to bring private negotiations to hearing in three weeks. There is a difference.

The Attorney General was not alone in criticizing your actions. Consider:

Michael M. Grant
2600 North Central Avenue
Attorney for Arizona Electric Power Cooperative, Inc. (AEPCO)
Comments on the Settlement Procedure
November 10, 1998

Staff's suggestion that the testimony/comments be filed by November 17, a hearing be held on November 20 and the Commission vote on these complex

matters at the conclusion of the hearing without briefing is ludicrous. Apparently, Staff, TEP and APS have been discussing these matters for several months. To allow interested parties only a few days to analyze the results and formulate and present their positions is unfair, irrational and clear violation of due process. (emphasis added) **(Attachment 11)**

Craig A. Marks
Associate General Counsel
Citizens Utilities Company
Comments on the Settlement Procedure
November 10, 1998

The Staff schedule would deny intervenors their due process and equal protection rights under the U.S. and Arizona Constitutions. Now after four months of closed-door negotiations, Staff asks the Commission to ignore all evidence.... No new evidence has been offered.... The resulting proceedings would be a sham of the highest order, barely even lip service to the intervenors' constitutional rights and the Commission's obligation to issue orders that are reasonably supported by the evidence and that are neither arbitrary nor capricious. (emphasis added) **(Attachment 12)**

Then you demonstrated your commitment to the public, to due process, when your office issued a Special Open Meeting Notice to review your Settlement Agreements. You wanted the public to come to your office on a Saturday, at 8 A.M. In 1999 this Commission operates during normal business hours. **(Attachment 13)**

Of interest is how transmission issues became so central to the proposed agreements, yet there were no hearings, proposals, workshops or rulemakings that considered investor-owned "Transcos." There is a September 18, 1998 letter from Ted Myers of R.W. Beck to Paul Bullis; Chief Counsel, Arizona Corporation Commission, regarding their "phone call today, and in your confidential transmittal of 9/17/98." **(Attachment 14)** In a September 23, 1998 letter to the file regarding hiring R.W. Beck, Paul Bullis, Chief Counsel, wrote: "In very early September, Tucson Electric Power Company (TEP) began discussing with Staff the concept of TEP's acquiring transmission assets of other Arizona electric utilities." Bullis continued "it is necessary to mobilize that expertise immediately so that the proposal can be evaluated and, if in the public interest implemented in a time frame so as to allow electric competition to begin on January 1, 1999." (emphasis added) **(Attachment 15)**

What record did you develop to support this "Transco" proposal? Where was your concern for due process? Can you point to any public process on this issue?

In the November 24, 1998 Procedural Conference, responding to a question from then Commissioner Jennings, Robert Lynch said of your Transco proposal:

Your statement, to the extent there's a question mark in there assumes facts not in evidence. It assumes that you can't go forward with competition under your rules without this asset swap, and that's not true in my view.

I don't see the mandatory connection. I see the desirability of it as reflected in the stock market, but in some people's views, but I do not see the necessity.

What we're talking about, very simply, other than market power issues that are involved, both horizontal and vertical in doing this, is getting a guarantee of recovery of stranded cost, avoiding the whole process, not having to prove that you've that you mitigated anything, by coming up with a formula to take the place of everything else that's in the rules.
(emphasis added) (Attachment 16)

In the same Procedural Conference, Paul Bullis told the Hearing Officer "Your Honor, it is my desire to have a completed order by December 10th, yes." Ms. Dallimore of the Attorney Generals Office inquired "Sir, do I understand as of this moment the schedule is that our testimony is due on the 30th, that rebuttal testimony is due on the 4th, and that the hearing will commence on the 7th of December?" (Attachment 17) The record shows you could not anticipate a full proceeding of the proposed settlements in the time provided. In fact you subsequently reduced the time for the parties to prepare for hearings the next day.

In your Special Open Meeting of November 25, 1998, perhaps former Commissioner Jennings explained the rush to judgement best:

Let me state the unstated. This is essentially a political process as well as a policy process. One candidate for the office said that he would derail this and another sitting Commissioner wants to wait until that new Commissioner is on board. And all parties are free to talk to the Commissioners and the Commissioners-elect and work their issues behind the scenes, and that's an unavoidable aspect for all this.

And I worked on this for four years. I think the issues are manageable. I'm not committed to the settlement at this point. I haven't heard the details of it; I haven't heard the objections to it. But I think it's--even though it's a somewhat abbreviated process, I think it's a reasonable process and I'd like the opportunity to decide this, and it would be a political event, a coup, if you will, on the process to defer this so that a different Commission can decide this, and I object to that.
(emphasis added) (Attachment 18)

The Supreme Court agreed with the Attorney General's view of your process. Vice Chief Justice Charles E. Jones granted the Motion for Immediate Stay of Procedural Order to permit consideration by the full Court of Petitioners' Verified Petition for Special Action and Writ of Mandamus. Your process was Stayed by the Supreme Court.

To me that means when you and former Commissioner Jennings overruled the Chief Hearing Officer's Procedural Order, you, and no other current Commissioner, violated the due process rights of Arizona citizens by denying them the opportunity to be heard on the proposal.

In fact, Vice Chief Justice Jones wrote: "Petitioners received notice of the hearing date four business days prior to a hearing which will involve detailed evidence on comprehensive issues. This is plainly insufficient under applicable standards." He further stated: "Fundamental procedural requirements include a full hearing, and evidence adequate to support pertinent and necessary findings of fact. This, in turn, requires sufficient notice of the hearing for the parties to prepare a satisfactory case and present the necessary evidence for the tribunal's consideration. This fundamental requirement is plainly absent in the instant case." (emphasis added) (Attachment 19)

You demonstrated the same rush to judgement in adopting amendments to the electric competition rules in discussions during your Special Open Meeting of November 25, 1998. After explaining how the time for parties to respond to rules should be reduced to half the normal period, Staff stated:

Ms. Alward:

Those emergency changes will now become permanent. But in the course of this process, we have discovered clarification needs and also the Secretary of State has required certain format changes in the way the rules are written to meet their standards.

Chairman Irvin:

Does it have to be at the December 10th open meeting, or can it be after?

Mr. Rose:

It depends on whether you wish to reconsider motions for reconsideration by the end of the year. We would need a 20-day period for motions to reconsider, and then the Commission could either vote those up or down.

Chairman Irvin:

I'm with you now. And these--never mind, strike that. I'm with you. I understand the issue.

(See Attachment 18)

After the Supreme Court rebuked your actions as a violation of due process, on December 8, 1998 former Executive Secretary Jack Rose sent an e-mail anticipating the passage of the electric

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competition rules reminding you "please be sure that the order is signed and docketed by 5p.m. Additional opinions can be docketed at a later date." And then as anticipated on December 11, 1998, in Decision No. 61272, you and the then Commissioner Jennings adopted the amendments to the rules as proposed by your Staff. **(Attachment 20)**

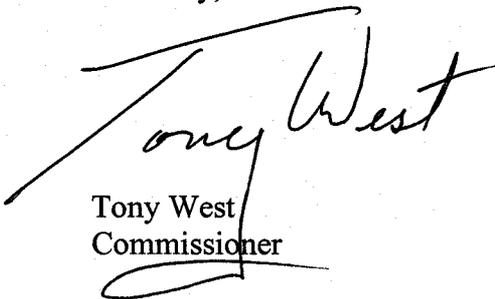
After interested parties filed for rehearing on December 31, 1998, you and then Commissioner Jennings stayed late and voted New Year's Eve to deny the applications for rehearing hours after those applications were filed. **(Attachment 21)**

On January 5, 1999, this Commission met in a Special Open Meeting and voted on a Proposed Order from my office, Decision No. 61311, which Stayed the rules and required the Hearing Division to begin a public process to review the rules. On April 14, 1999, we met again to consider those proposed changes to the rules and Stranded Cost Order.

In 1999, we took three months to consider an issue, and you question the process. In 1998, you tried to ratify private negotiations over a matter of days, held ex parte conversations with Staff, and changed policy without support in the record. You overruled the Chief Hearing Officer to shorten the time parties have to prepare for hearings. You wanted public hearings to convene at 8 A.M. on a Saturday, and you wanted parties to argue cases for twelve hours a day. You were stopped by the law. After failing to accomplish your goal you had an after-hours meeting on New Years Eve and voted on issues filed less than three hours before.

Commissioner Irvin your dissent is even more puzzling when one reads your pet peeves: "dishonesty" and "pathological liars." **(Attachment 22)** Your "challenge to your colleagues to provide such an answer so that healthy debate can follow..." has begun in an open, factual and truthful manner. You believe your actions are beyond reproach. But you have a record that I will share anytime it is necessary to show which Commissioner has due process violations.

Sincerely,



Tony West
Commissioner

Attachments

C: Commissioner Kunasek w/ attachments

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May 21, 1998

TELECOPIED AND MAILED

(Fax number: 602-542-2129)

Ray T. Williamson
Acting Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85004

Re: Your memorandum of May 19, 1998 enclosing a copy of ACC Staff's position on some important issues related to retail electric competition; comments of the Arizona Transmission Dependent Utility Group

Dear Mr. Williamson:

You have asked for comments on this new draft staff position by noon on Friday, May 22, 1998. I represent the Arizona Transmission Dependent Utility Group, an intervenor in the stranded cost proceeding that has just concluded with the issuance of the Proposed Opinion and Order by Chief Hearing Officer Jerry Rudibaugh. We have also been a participant in the rulemaking proceeding generally:

I must say as a threshold matter that giving people some 36 hours to react to what you label as "important issues" erodes the credibility of the process. If the Commission and/or the staff is truly interested in receiving meaningful comment from "stakeholders", then adequate time to do so seems imperative.

Your notice also indicates that there will be a special open meeting of the Commission on June 3rd. Your memorandum does not say whether that will be confined to discussion among the Commissioners and staff about the proposal you finally docket with the Commission next Friday. Is the Commission planning to receive additional comment from "stakeholders" at that special meeting? Will comments be received only from those who participated in the stranded cost hearing process? Will

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comments be received from anyone listed as a stakeholder in the rulemaking? Will written comments be accepted? Required?

As you can see from the above questions, your memorandum of May 19th raises many procedural issues. The draft statement of position of the ACC staff raises even more substantive issues. I will attempt to address some of them.

STRANDED COST

The current rules do not define the concept of "verifiable" in the definition of stranded cost. If divestiture occurs, the transaction in question will be evidence of the cost issues involved and constitute verification. If some other method is used, the concept of verification is left undefined. The portion of the definition related to a cut-off date for investment is omitted from your quotation and thus begs the question as to whether a cut-off date for stranded costs is still an operating mechanism. This in turn affects the concept of verifiability.

Unlike the Proposed Opinion and Order, you leave to the Commission appropriate recovery mechanisms and recovery periods. If recovery mechanisms aren't defined in the rules and recovery periods aren't specified, how will a utility present a case? How will opponents present rebuttal evidence?

You've acknowledged that the utilities have a burden of supporting their claims for stranded costs. However, you have not identified the standard for that burden of proof. You must have a standard in order to have a workable process. I would suggest that you must propose that the utilities must submit competent evidence so as to demonstrate by clear and convincing evidence that stranded costs have actually been incurred and the amounts incurred. Without a specific yardstick, no one will know the nature of the evidentiary burden on the utility or the nature of the necessary rebuttal evidence to overcome the proof offered by the utility. In short, you won't have workable rules.

You must differentiate between contract extensions and contract renegotiations. Otherwise, you don't have a workable concept for dealing with special contract customers.

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You must specify a process and a methodology for the Commission determination of value related to assets transferred. Otherwise, the concept of "fair and reasonable" cannot be implemented.

AFFILIATE RULES

Here again, the decision-making contemplated is not defined as to process or methodology. This includes costs associated with the restructuring and costs approved by the Commission that are cost-sharing items or joint marketing programs.

IMPLEMENTATION OF COMPETITION

Your concept of timing and customer selection means that only small electric users will not have access to competition next January. You allow aggregation of loads of 20 kilowatts or more but at the same time have a separate staged-in access rule for residential aggregation. Is it your intention not to allow residences that have loads of 20 kilowatts or more to aggregate next January?

METERING AND BILLING

You allow competitive metering and billing services to begin next January for every customer that has access to competitive electric power services at that time. That is all customers at or above 1 megawatt of load and all customers at or above 20 kilowatts who can find a group with which to aggregate to meet the 1 megawatt threshold. This assumes that all new entrants can be licensed by January in order to join the affected utilities or their agents in offering such services. By the way, agents are not defined but I am assuming they would also have to be licensed.

You allow customers accessing competitive electric power services to choose who will send them bills. At the same time, you give affected utilities the power to order connections, disconnections and reconnections. It is not clear that they must do so at the customer's request. That must obviously be your intent or you would be strangling the system by allowing the affected utility not to comply.

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LOCAL DISTRIBUTION COMPANY SERVICES

You designate affected utilities as providers of last resort and allow them to recover such costs through a distribution system-wide tariff approved by the Commission. This concept has not been intended to protect customers who do not pay their bills. It has been intended to protect customers from electricity suppliers actions over which they have no control. If the Commission does its job in licensing electricity suppliers, then extra charges for carrying reserves to supply to customers that need to reenter the system should be virtually nonexistent. Even if such events occur, why should not the person seeking the advantages of competition bear the risk that a bad choice was made? Why should someone pleading to come back to a system have a subsidy for doing so charged to other customers who didn't leave?

TRANSMISSION AND DISPATCH

There is no way you can order affected utilities to join an independent system operator. This concept, devised by the Federal Energy Regulatory Commission, is likely to fail in the Western United States. The Northwest ISO (IndeGO) has already collapsed. Desert STAR is being discussed but its own internal target is only to have a filing made at FERC by the end of this year. And there is no guarantee that Desert STAR will work.

Indeed, the ISO concept in the West has been thrown a curve by none other than the Internal Revenue Service in its temporary regulations on Private Activity Bonds. There is a substantial question about whether a multi-state ISO can be created under those regulations and whether a federal agency, here the Western Area Power Administration, can participate if such an entity is created. Since the system of the Western Area Power Administration and the system of those utilities that are capable of using tax-exempt financing are effectively intertwined with the systems of other utilities in this region, the IRS may have, at least temporarily, derailed the entire concept of ISO's in the West where, like Arizona, such conditions exist.

For the same reason, the temporary use of an independent scheduling administrator may not work. Depending on the level

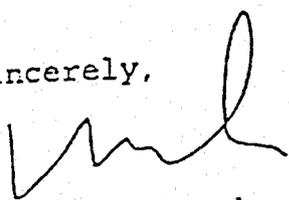
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of control that such an entity is given and the type of entity involved, the same concerns raised by the IRS rules may pertain. Since there is no current discussion about how to put together an independent scheduling administrator, and all current efforts are invested in the development of the ISO, Desert STAR, putting an independent scheduling administrator process in place by January 1 would seem problematic, even if not impeded by IRS regulations. Moreover, the decision with regard to must-run units in a multi-state context cannot be made only by the Arizona Corporation Commission.

I have presented these questions and issues by way of example. They are hardly inclusive. I am also enclosing as an attachment the comments of K.R. Saline, our witness in the stranded cost proceeding. If we, being essentially outside the ACC process, can think of this many concerns, I rather imagine that the affected utilities have even longer lists. I have not attempted to discuss the differences between the Proposed Opinion and Order and this document, let alone differences between H.B.2663 and this document. Suffice it to say that the Commission has an enormous task in front of it if the Commission is choosing to articulate a different playing field than the one described for Salt River Project in H.B.2663.

Since you did not indicate that this document constitutes any part of the rulemaking docket at this time, I will presume that I am not obligated to copy the other parties to that proceeding. If I am in error in that assumption, please let me know.

Sincerely,



Robert S. Lynch

RSL:psr

cc: Docket Control Division
Jerry Rudibaugh
Paul Bullis
Arizona Transmission Dependent Utility Group

Detailed Comments on ACC Staff Position by K.R. Saline, K.R. Saline & Associates:

A: Stranded Costs:

The Staff should add the position that all new loads added after 12/26/96 shall not be subject to paying for any stranded costs.

As the staff correctly recognized in its position on Special Contracts, the utility should be at risk for all costs and decisions made to connect new loads after 12/26/96. This position will also ensure that over recovery of stranded costs by the utility does not occur. For example, if a utility added 100,000 new customers between 12/26/96 and 12/31/98 then the utility has been recovering additional capital recovery over that period of time to above costs which were already recovered in rates. This over recovery has reduced the amount of stranded costs which could be assessed to the existing customers. To allow assessment of stranded costs on the new loads would guarantee double recovery by the utility, because the current rates have not been adjusted for load growth. If this provision is not implemented, then all new loads must avoid standard offer service to avoid paying for stranded costs assessed to standard offer customers prior to 1/1/99. This will create an unfair burden to the new customer and eliminates the benefits to existing customers of adding new standard offer customers who can help dilute any potential stranded costs of the utility (i.e. load growth will help mitigate stranded costs).

Furthermore, as prospective new loads are added, the ability for the residential customers to ultimately achieve access after 1/1/01 will be based upon successful residential aggregation programs being developed and implemented in the interim. Allowing all new loads after 12/26/96 to avoid stranded costs will encourage the developers and new communities to develop residential programs so a robust residential access program will be operating as the remainder of the residential customers are able to participate. This will help avoid the California syndrome, where very few customers are participating and residential access is tremendously lagging the larger loads.

B. Affiliate Rules

The paragraph "The Affected Utility must offer the same terms and conditions of service to all competitors and their customers as it offers to any of its affiliates and their customers." is mandatory for nondiscriminatory retail access to occur. Furthermore, exertion of market power situations or anti-trust actions should not be tolerated and should be well documented in the ACC rules so all customers are afforded prompt and definitive legal remedies should such anti-competitive actions occur. The goals of the ACC should be amended to state that affiliate rules will be developed:

- * to eliminate anti-competitive or discriminatory actions by affiliated utilities

An example of this goal is the implementation of transmission rights. While distribution wire services will be comparable from load to load, the transmission rights on the grid will determine whether the loads or the generators have transmission rights on the system. The staff must remember that the Arizona system is like a wagon wheel with the load in the hub and the generators and markets around the rim.

If the generators have the transmission rights, then they will use the rim to reach to the highest value market (i.e. California) to maximize revenues. If the loads have the transmission rights, then the loads will have access to four-corners, Marketplace and Palo Verde, three of the most competitive trading locations in the southwest. Clearly, the loads must have the transmission rights on the system for retail access to be successful in Arizona.

The system was developed to connect the hub and wheel and only excess transmission should be utilized for through-wheeling to other load centers. The FERC clearly recognizes native load rights to the transmission system. If the utilities are divested, the native load transmissions rights must be transferred from the Merchant (i.e. generation) group to the loads. The loads have paid to develop the system and the full repayment of the transmission system is included in the current rates. Unlike generation assets, transmission assets are fully recovered.

As loads are aggregated, or switch service providers, their transmission rights will also be very important in delivering multiple resources and achieving economies of scale among consumers for using transmission resources and ancillary services. Without the ability for each customer to have and transfer their transmission rights, the loads will be always be subject to being on the margin for switching service or be subjected a single geographic supplier with limited flexibility for resource optimization or efficiency. By providing a clear direction that transmission rights must stay with the loads, the loads (i.e. customers) will be assured of access to a robust market of suppliers without penalty for switching suppliers, which will in turn make retail access very successful in Arizona.

Without this direction, the generation affiliate will attempt to assert ownership rights to the transmission system thereby subjecting the consumers to a bidding regime for transmission rights as well as generation suppliers. If the generation affiliates end up with the transmission rights, the generation affiliate will end up with all of the tools (i.e. deregulation and transmission rights) to be financially successful and control the market. This will of course lead to market power domination by the transmission owning companies power affiliate in the region. This is a critical issue which must be recognized and addressed head-on by the ACC staff.

C. Implementation of Competition

As mentioned above, the effective implementation of competition must include transmission rights to the loads and eliminate stranded costs for new loads added after 12/26/96.

The staff should also consider the mathematics of its proposal and self imposed limitations on customer participation. If an affected utility has 4000 MW of peak load then with the 1 MW limits, in the worst case the utility could end up no more than 4000 customers as long as the ACC Staff does not impose a limit on each customer for participating. Assuming the customers are aggregated, the aggregated size limitations will be applied to scheduling and delivery requirements at the generation and transmission level, not at the individual meters. So it doesn't really matter to an aggregated pool if the aggregation has 50 - 20 kW customers or 1000 - 1 kW customers, as long as the aggregated pool operates with the ISA and transmission operators on a comparable basis. By reducing the customer limitations early on, the ability to include the small customers will lead to a more cross-sectional and efficient aggregation

throughout the phase in period. While the economics of separately managing a 1 kW load may be the real limiting factor, the ACC Staff should not impose a 20 kW standard on the customer which is not the real factor which determines a customer's ability to participate.

D. Metering and Billing

We suggest the ACC Staff add the goal of:

- * To promote the economic transition of existing metering to new metering technologies.

While the new metering costs are not necessarily unaffordable, if there are 1 million meters in the valley at \$100 per meter the consumers will ultimately bear \$100 million of new costs and leave potentially functional meters stranded from providing any further service. The major applications for new metering will be for the large customers who choose to dynamically meter their loads and schedule their resources to avoid energy imbalance charges. If a customer cannot economically justify the cost of a new meter through reduced energy imbalance charges or reduced meter reading charges, then the customer should be permitted to continue using the existing technology and load profile their consumption with any supplier. If, over time, the energy imbalance, metering, and billing charges are competitive such that the customer can justify buying a more expensive or sophisticated meter then such changes will progress in orderly fashion. Competitive metering companies can obviously provide another incentive to the smaller customer to change metering services. (i.e. provide a free meter for changing their metering company).

We strongly support the concept of load profiling being acceptable as open access metering but recommend the 20 kW limitation and "after the transition period" be removed. There are loads and customers who may have load profiles which are very compatible with load profiling irregardless of the size of the load. For example an irrigation pump is usually much larger than 20kW, but it uses the same amount of electricity every hour that it operates and has a very predictable load shape. If the customer can reasonably predict their operation, they can predict their usage and demonstrate their load profile is accurate for their end-use load type.

Similarly, it has been implied in discussions that only the standard offer customer class can use load profiling for their loads. This is anti-competitive and represents another misrepresentation of the physical facts of the customer. If a customer's load can be load profiled for estimating their load for APS to schedule and deliver power, then there is absolutely no physical reason why the load cannot be profiled and used by another entity to schedule and deliver resources.

E. Local-Distribution Company Services

The goals of the ACC for Local Distribution Company Services should be that the Affected Utility will provide comparable distribution wire services to all customers and offer Standard Offer service to all customers who do not choose to change suppliers. The first part of this goal clearly delineates the comparability standard for providing wire services to all

customers irregardless of their supplier. This goal or standard will also make sure every consumer is aware that their changing of power supplier will not permit a change in the quality of service afforded the customer. Linking comparability in the section of Local Distribution Company Services reinforces wire service comparability.

F. Transmission and Dispatch

As mentioned above, the firm transmission rights must be associated with the loads. In addition, since the entire transmission and dispatch system is changing to an unbundled and independent service, we suggest the Staff change the paragraph stating that ISA costs will be recovered from competitive customers to recovered from all Scheduling Agents on behalf of all customers. Even though initially, the ISA's purpose will be to include additional suppliers, the affiliated merchant groups should also have to pay ISA' costs upon implementation dates. Another means would be to charge each ISA the same unit cost/kw or cost/customer which is imbedded in their standard offer rates. This way ISA costs will be borne fairly by all scheduling agents which use the ISA services including the merchant groups which serve the standard offer customers. Otherwise, the ISA charge will become another barrier to retail access since the entire ISA costs will be driven by the incumbent control areas and collected by only the competitive customers. There would be too many incentives in the current proposal to increase costs to deter consumers from switching to competitive suppliers.

Finally, with regard to the ISA/ISO issue, the ACC should recognize that there are major problems with the ISO at the IRS and among the transmission owners that are yet to be resolved. The ACC should not mandate an ISO but allow the ISA to evolve if retail access is to begin on schedule. The ACC should allow the ISA process to work then intercede if market power conditions mandate that the separation mandated by FERC under Orders 888 and 889 are not sufficient to force open and comparable transmission access. If the ISA process achieves affordable and comparable retail access, then the ISO may or may not be needed. Evolution and patience should be exhibited in this process since the reliability of the system is a significant issue which should be addressed carefully.

2

Director



Arizona Utility Investors Association

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May 21, 1998

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

RECEIVED
AZ CORP COMMISSION

MAY 22 10 25 AM '98

DOCUMENT CONTROL

DOCKET NO. RE-000000-9 015

RECEIVED
AZ CORP COMMISSION
MAY 26 3 05 PM '98
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Dear Ray:

Yesterday afternoon at approximately 4:00 p.m. I received from a third party a copy of your letter dated May 19, 1998 addressed to "Dear Stakeholder in Retail Electric Competition" and a copy of the staff's seven-page position paper on the major issues involved in retail electric competition. The letter indicated that the staff's positions are similar to those expressed "in various stakeholder meetings over the past two weeks."

For the record, AUIA has not yet received this document from your office, nor were we notified of or invited to any "stakeholder meetings" in the past two weeks.

As you are well aware, the Arizona Utility Investors Association has been an intervenor in the Commission's competition docket since its inception. We have attended hundreds of hours of working group meetings and we also participated from beginning to end in three weeks of evidentiary hearings on stranded costs conducted by the Chief Hearing Officer in February.

With regard to those hearings, perhaps you can clear up something that is confusing me.

I have a staff position on stranded cost submitted by Paul Bullis as the sworn testimony of Dr. Kenneth Rose in the evidentiary hearings in February. It doesn't advocate divestiture. Now we have a staff position that virtually mandates divestiture. Did Mr. Bullis submit perjured testimony? What process produced this new position? How do we know when a staff position is real or just the *parlance du jour*?

In other words, what are the ground rules around here? The members of AUIA are also Arizona taxpayers. They have the right to expect an open and lawful process and not one where the decisions are hatched in secret meetings.

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Phoenix

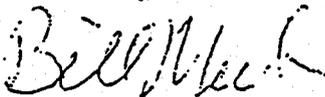
Keith D. Sprinkle
Scottsdale

Page 2, Williamson

Staff has produced an entirely new mutation of restructuring and your letter requires comments by noon tomorrow. That means we have about 36 hours in which to digest this plan, analyze its impact on utility investors (with no opportunity to seek explanation or clarification) and cobble together some kind of response. We'll do what we can.

In the meantime, while your plan freely assigns restructuring costs to utility investors, it seems clear that the Corporation Commission does not classify utility shareholders and bondholders as "stakeholders" in these issues. Instead, we have been cut out of whatever process has been under way. I want to assure you, however, that we will not go away.

Sincerely,



Bill Meek
President

cc: Commissioner Irvin
Commissioner Jennings ✓
Commissioner Kunasek
Jack Rose

3

EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION

JIM IRVIN
COMMISSIONER-CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

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MAY 29 1998

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

IN THE MATTER OF THE COMPETITION IN) DOCKET NO. RE-
THE PROVISION OF ELECTRIC SERVICES) 0000C-94-0165
THROUGHOUT THE STATE OF ARIZONA) FORMERLY U-0000-94-165

RESPONSE TO THE OPINION AND ORDER FILED BY THE CHIEF HEARING
OFFICER, JERRY RUDIBAUGH, MAY 6, 1998

By Barbara Sherman, for the Arizona Consumers Council

- I. It is important to note that the opinion and order filed by the Chief Hearing Officer includes careful consideration of the issues, whether or not we agree 100% with them.
2. It is also important to note that the interests of small residential and other consumers received some consideration in this order, notably
 - A. with the "sharing of stranded costs between ratepayers and shareholders." (p. 9, lines 4-5)
 - B. with the objective "to minimize the stranded cost impact on the customers that remain on the standard offer." (p. 9, lines 16-17)
"It is not the Commission's intent to have small consumers pay higher short-term costs in order to provide lower costs for the larger consumers." (p. 9, lines 20-22) And also, "It was the Commission's intent in Rule 1607(J) to make sure customers on the standard offer were not charged stranded costs as part of a transition charge in addition to an identical allocation as part of the standard offer. As a result, all customers connected to the transmission and distribution systems will be paying a share of stranded costs in some form but there will be no double charge allowed." (p. 16, lines 15-18)
 - C. with the truthfulness test: "It is the Commission's intent that customers of the Affected Utilities be given the bottom line results of stranded costs. It should not be called a decrease unless it is a decrease on the overall bill." (p. 9, lines 26-28)
 - D. with recognizing that negative stranded costs should benefit the consumers. "If the stranded cost amount is determined to be negative, ratepayers and shareholders should receive an equal share of such amount." (p. 12, footnote 6, line 28)
 - E. with understanding the concerns of small consumer groups:

p. 2, Response to Opinion and Order, May 6, 1998 by AZ Consumers Council

"We share the concerns expressed by small consumer groups. If small consumers are not going to have benefits in the short run, they should not be unfairly burdened with increased rates resulting from the transition costs.

(p. 18, lines 15 – 17)

and,

F. with recognizing the threat of exemptions from stranded cost payments as "cost shifting". (p. 19, lines 5 –6)

We, the Arizona Consumers Council appreciate and concur with these opinions. We are concerned with the staff attempt to circumvent this Opinion and Order and ask that these above opinions be incorporated within any final order by the Arizona Corporation Commission.

In addition, it must be noted that the order in which actions take place is important. Dr. Mark Cooper, the Arizona Consumers Council's national expert, stresses the following order:

1. The decisions about and calculations of stranded costs
2. The sharing of stranded costs between customers and shareholders at 50%
3. The financial integrity test
4. The mitigation of stranded costs by the utility company.

The Opinion and Order allows the utility companies to keep mitigation savings as an incentive. (p. 9, lines 9 – 10)

As "deregulation" or "restructuring" has been developing in Arizona, our concerns about it have grown. The ability of the vested utility, marketer and large consumer interests to influence policy have made it very difficult for small consumers to receive consideration in the processes at the Commission and the Legislature. We believe that this Opinion and Order recognizes our interests in its opinions.

This entire process has been driven by the large vested interests--utilities, marketers and large consumers. These interested parties have risks but also have the knowledge and resources to generally benefit from the "deregulation" or "restructuring" of electricity generation.

At this point in time small (residential and other) consumers face the probability of being shut out of competition in early phases, in contrast to the original Rules by the Arizona Corporation Commission.

While small consumers are being shut out, large users have contracted for discounted electricity prices. It is imperative that the government agencies which are setting forth these policies, that shut out small consumers, act to protect small consumers from paying for the discounts of these large users.

To this end, the additional following actions must occur:

A. Adequate monies for and an adequate education program must be forthcoming to inform small (residential and other) consumers. Since the legislature failed to provide monies, the Arizona Corporation Commission must meet its constitutional mandate and help protect the small consumer.

B. Adequate monies must be collected for Systems Benefit Charges to pay for-- not only the existing but also-- the additional problems that will develop under "deregulation" or "restructuring", i.e., the move to competition.

C. In particular, the Arizona Corporation Commission must continue its long standing practice of evaluating contracts to make sure that costs are not shifted from large to small consumers.

D. The Arizona Corporation Commission must provide to the public information about allocation of costs for different classes of customers, including aggregated information on contracts, so that policy and procedural corrections can be made. Of especial moment are the situations in which large consumers are not paying their fair share of costs and small consumers are paying more than their fair share of costs.

E. Protections must be created for small consumers with relation to changes of provider, disconnects and reconnects, and provider of last resort.

F. Some system of parity must be established among all providers and sellers for legal, operational and other requirements.

F. Reliability must be preserved throughout the transition and change into the future.

G. Renewables are an important social and environmental component of a sustainable electricity system. They must be included in the competitive system.

H. Because the threats to small (residential and other) consumers are growing rather than diminishing, we believe that the standard offer must continue past deregulation. We also encourage the development of a basic service package for small (residential and other) customers, but especially for low-income consumers.

Page 4, Response to Opinion and Order, May 6, 1998 by AZ Consumers Council

I. We recommend that the preferred calculation methodology of small consumer groups, the "Bottoms Up" approach be used if utility providers do not divest their generation assets.

J. THE BOTTOM LINE. We will continue to hope for a rate reduction and will appreciate efforts by all to make it happen.

K. Anti-trust protection will become increasingly important for consumers during competition. The Arizona Corporation Commission and the Attorney General's Office need to work together.

We reserve the right to make additional comments as needed. Thank you.
Submitted May 29, 1998, with copies being sent to the service list.

4



Craig A. Marks
Associate General Counsel

EXCEPTION

Citizens Utilities Company

RECEIVED
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Phoenix, AZ 85012-2736
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Email: cmarks@czn.com

MAY 14 12 10 PM '98

May 14, 1998

Mr. Ray Williamson
Director, Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85004

RE: Staff's Proposal for Electric Restructuring
Docket No.: U-00000-94-0165

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MAY 14 1998

LEGAL DIV
ARIZ. CORPORATION COMMISSION

Dear Mr. Williamson:

Citizens Utilities appreciates the opportunity to attend last week's meeting where a new proposed plan for electric restructuring was discussed. The proposal appears to be a comprehensive plan for the restructuring of the electric industry, and included a recommended approach for stranded cost recovery. Although Mr. Rose, the Commission's Executive Secretary, introduced the plan, it is our understanding that this is Staff's proposal. Citizens recognizes that a settlement of electric restructuring issues would be an effective way to bring competition to Arizona, and acknowledges the efforts Staff has made to initiate settlement discussions.

However, Citizens believes that there are a number of unresolved issues that must be an integral part of any settlement agreement. The Staff's proposal is ambiguous and/or incomplete in several respects, including the type of stranded cost charges to be used, the manner in which it will be computed, and the duration during which it will be imposed. These and other issues must be resolved, as they are critical elements of any electric restructuring plan. Citizens' specific concerns are outlined below.

Stranded Cost Issues

With respect to the issue of stranded cost recovery, the Staff's proposal creates significant doubt about the Affected Utilities' ability to continue to apply Statement of Financial Accounting Standards ("SFAS") No. 71. The level of assurance of future recovery required for continuing application of SFAS No. 71 simply does not exist under the proposal. Clearly, the option under which utilities would be required to absorb 50% of stranded costs will trigger the write-off of all regulatory assets, and any assets impaired under the criteria of SFAS No. 121.

In addition, Citizens has a number of questions about the Staff's proposal related to stranded cost identification, quantification, and recovery:

- How will "stranded cost" be defined under the Staff proposal?
- How will regulatory assets be treated?
- Will there be any provisions for "stranded employees"?
- How will the local distribution company ("LDC") transition costs, such as handling new supply and demand transactions, be treated?
- Does the divestiture option require that generation needed for local system support ("must-run" generation) be divested, or can such units remain within the regulated LDC?
- Will LDCs be allowed to offer metering and billing services at regulated prices without structurally separating these services?
- What guidance will be provided on forecasting market-clearing prices for utilities opting for the new revenues lost approach?
- For utilities opting for divestiture, how will firm system power contracts with others be handled, particularly system power contracts? Will a "slice" of a system power contract be sold with each unit?
- How will stranded costs be allocated among rate classes?
- Which customers will be required to pay stranded costs?
- Will "exit fees" be allowed as a means to "buy-out" stranded costs?
- How will the stranded cost recovery mechanism work?
- What is the period over which stranded costs would be recoverable?

Rate Freeze Issues

The Staff proposal appears to include requirements that the Affected Utilities freeze rates and/or lower rates by 10-15%. Citizens has concerns regarding these provisions. As a non-generating utility, Citizens will realize no savings or increased profitability attributable to the deregulation of electric generation in the State of Arizona. The Company obtains, and passes through to ratepayers with no markup, Purchased Power and related costs under contracts approved by both the Federal Energy Regulatory Commission and the Arizona Corporation Commission with no profit being achieved by Citizens from its generation activity. There exists no enhanced revenue source or expected cost reductions from which customer rate reductions may be derived.

Moreover, this company is facing substantial required improvements and upgrades to its electric transmission and distribution delivery system, to enhance system safety and reliability and enable customers to obtain power from competitive sources. The magnitude of these projects will undoubtedly result in the company filing for future rate increases, some of which may be substantial.

Divestiture Requirement

Citizens is opposed to the requirement that all competitive services must be conducted from a fully separate subsidiary, as proposed by Staff. The only affected assets that Citizens has are an insignificant investment in a peaking generation unit and its inventory of metering and billing equipment. Notwithstanding our opposition to considering metering and billing as competitive services at this time, we are opposed to divestiture because the cost of creating a separate entity and the related asset transformation far exceeds any potential benefits to be derived therefrom.

Pilot Program

Citizens opposes the required introduction of residential pilot programs. As evidenced in New Hampshire and Illinois, where residential pilots have been attempted, the results can be inconclusive or even misleading. Such programs of limited duration frequently produce unrealistic prices or marketing gimmicks that are either misleading to consumers or unsustainable in the long run.

Legal Issues

Citizens' fundamental concern with the Staff's proposal is the assertion that Staff intended to have the Hearing Officer's Recommended Order in the stranded cost proceeding "pulled", with Staff's recommendation substituted for that order. Citizens believes that such action would violate the fundamental principles of due process. In February of this year, a stranded cost evidentiary hearing was held. That hearing lasted weeks and dozens of witnesses testified regarding the issues of stranded costs. The Hearing Officer's Recommended Order was based upon the evidence and testimony presented in that hearing. If this Commission were to allow Staff to interfere with the process that is already in place, it would be a clear abuse of process. Instead, Staff, as a party in the stranded cost proceeding, should be limited to presenting its exceptions to the Recommended Order, as all of the other parties are.

In addition, Citizens has concerns regarding ex-parte communications with Commissioners. At last week's meeting, the Executive Secretary presented Staff's proposal and indicated that all the Commissioners supported Staff's new proposal. From those remarks, Citizens has inferred that the Commissioners must have had either written or oral communication regarding this proposal. The Commission's rules prohibit "communication ... concerning the substantive merits of a contested proceeding to a Commissioner or Commission employee involved in the decision-making process for that proceeding."¹ On the other hand, the rules also specifically state that the ex parte rules do not apply to rule making proceedings.²

¹ A.A.C. R14-3-113(C)(1)

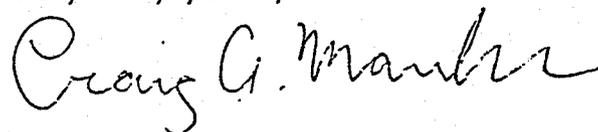
² A.A.C. R14-3-113(B)

The proceedings in this matter have been unique. The Electric Competition Rules docket was reopened, yet the hearing addressing stranded cost was clearly an evidentiary hearing, with all the attributes of being a "contested matter". Witnesses were cross-examined, evidence was introduced into the record, and briefs were filed regarding specific legal issues. As a "contested matters", the ex-parte rules would have applied from the time the matter was set for hearing.³ Under those circumstances, any communications with the Commissioners would be inappropriate as they are the final decision-makers in this matter.

If the Commission views the stranded cost hearing as simply part of the rulemaking process, Citizens believes that Commission should notify the parties of that position. If it is proper, Citizens would like to have the opportunity to discuss it's position regarding electric restructuring issues with the Commissioners. Other parties would probably like to have the same opportunity.

In closing, Citizens supports retail competition and believes that a settlement of these issues would move Arizona closer to the implementation of a competitive market. I would be happy to discuss these issues with you further. Please feel free to give me a call at 532-4433, at your convenience.

Very truly yours,



cc Docket Control Division
Jerry Rudibaugh
Paul Bullis
Ray Williamson
All parties of record

³ *Id.*

5

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Jennings Strouss & Salmon

May 22, 1998

Mr. Ray Williamson
Acting Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007-2996

Via facsimile 542-2129

Re: *Comments on the Staff Position Statement*

Dear Ray:

We are writing to you to comment on the staff position statement which we received earlier this week.

We were surprised to see the recent statement of position of the staff. SRP has been an active participant in the rulemaking docket and the various working groups. Although SRP is not a party, we are actively monitoring the stranded cost proceedings. The staff statement seems to bypass this entire process, especially as it purports to state positions of the Commission. We need to be working hard on the details of implementing competition, not changing the rules this close to the start date.

While SRP management position differs substantially with many of the positions stated in the staff report, two issues are of particular importance in coordinating the efforts of the Commission and SRP.

The first issue involves the requirements in the position statement for participation in an ISO and requirements for distribution system access. As you know, all regional utilities, including utilities not within either of the ACC or SRP jurisdictions, have been working for some time to agree upon and implement appropriate structures and organizations. This effort is taking place because transmission is not sensitive to state boundaries, and because it is, of course, subject to FERC regulation. These meetings, through Desert STAR, are being held on a regular basis, and have been attended by an ACC representative.

It is physically impossible to implement an ISO before the end of the year. It is for this reason that an interim transmission solution is being developed. The parties will ultimately develop an appropriate regional ISO or other coordination mechanism. We ask that the

Attachment 5

Ray Williamson
May 22, 1998
Page 2

Commission participate in this process, and not try to unilaterally impose rules on only some of the participants. Central to resolution of these issues is system reliability. This is an area where cooperation and coordination are at a premium.

Also along these lines are requirements regarding the details of distribution access. All participants in competition have been holding a series of meetings as the Arizona Direct Access Group. These meetings will establish the complicated details of how retail access will actually function at the end of this year. The next meeting is scheduled for June 2. We do not have the luxury to delay these efforts, at all. We ask that the Commission approach these meetings in a cooperative effort to actually make competition a reality.

One example where an understanding of the intricacies of providing retail access is essential is in establishing access criteria. The suggestion in the staff position would unnecessarily impose significant additional costs on distribution customers by broadly requiring "non-discriminatory" retail open access to transmission and distribution systems. This blanket requirement would also seriously jeopardize system reliability. While it is possible for SRP to follow different rules, it is highly impractical because of the significant interconnections between the APS and SRP systems. Coordination on this issue is therefore of particular importance.

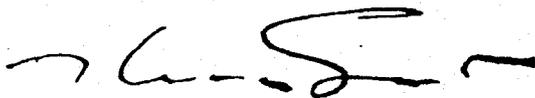
The second issue involves the suggestion that load over 20 kW could be aggregated beginning at the end of this year. This requirement would be a significant departure from the schedule of H.B. 2663, contrary to the understandings reached in legislative meetings, and contrary to the Commission's own rules. While we do not have specific data on the APS loads, we estimate that this requirement would open to competition to a substantial percentage of APS's total load. A massive effort will be necessary for the state to meet the 20 percent requirement at the end of the year. By now imposing a "flash cut", implementation will become close to impossible, and we will destroy the consistency which the ACC and SRP are both bound to achieve. We suggest that all parties adhere to the current schedule, so that competition can start on time.

We look forward to working with you to achieve our goals and the goals established by state law.

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.

By



Kenneth C. Sundlof, Jr.

6

RESPONSES OF STEVEN S. DICKERSON

Q. When did you meet with Commissioner Irvin and Jennings?

I have met with both Commissioner-Chair Irvin and Commissioner Jennings, separately, on several occasions during my tenure at the ACC. In regards to the May 19th draft of the Staff Statement of Position, I have met with Commissioner Irvin twice.

Q. Were you directed by Mr. Rose to have those meetings?

Mr. Rose directed me to meet with Commissioner-Chair Irvin to discuss the contents of the Staff Statement of Position, excluding issues related to stranded cost. On both occasions, Mr. Rose was a participant in the discussions. At the second discussion, Mr. Bullis and Mr. Ahearn were also in attendance.

What was the nature of those discussions?

Outside of the most recent meetings with Commissioner-Chair Irvin, the discussions were over general issues of retail electric competition. The most recent meetings with Commissioner-Chair Irvin focused on the contents of the Staff Position with the exception of issues related to Stranded Cost.

Q. Was divestiture discussed?

Outside of a March 11 memo addressing market structure in a competitive regime, and resulting discussions, divestiture has not been discussed. In this memo addressed to Commissioner-Chair Irvin, Commissioner Jennings, and Commissioner Kunasek and dated March 11, I also provided technical assistance by describing the fundamentals of three stranded cost calculation methods: replacement value, net revenue lost, and divestiture. In addition, I met with Commissioner-Chair Irvin and Commissioner Jennings individually, and offered to meet with Commissioner Kunasek, regarding this memo.

Q. Are you the author of the May 19th Staff Proposal?

I was just one member of large Staff group involved in the drafting of the Staff Statement of Position.

Q. Did you ever discuss the conversations you had with the Commissioners with other members of Staff?

The specifics of the conversations that I had with Commissioner-Chair Irvin and Commissioner Jennings were not shared with other Staff members.

7

JIM IRVIN
COMMISSIONER-CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



JACK ROSE
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

June 3, 1998

Commissioner Carl J. Kunasek
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: **Stranded Cost Proceeding**
Docket No. RE-00000C-94-0165

Dear Commissioner Kunasek:

At the morning session of today's Special Open Meeting, you noted that a memorandum prepared by Steven Dickerson had not been placed in the docket. A copy of that memorandum is attached and is being docketed with this letter.

I will note that the memorandum is a discussion of market structure in a competitive regime. Included in that discussion is a description of the fundamentals of various stranded cost calculation methodologies, including divestiture.

The Commission's ex parte rule, A.A.C. R14-3-113, prohibits communications not on the record between parties and the Commissioners concerning the substantive merits of a contested proceeding. The memorandum does not address the merits of positions in the stranded cost proceeding, and therefore, does not fall within the ex parte rule.

In addition, the ex parte rule explicitly does not prohibit communications between Staff and Commissioners on technical matters. In my opinion, the description of the calculation methodologies fits within this exception.

Commissioner Carl J. Kunasek
June 3, 1998
Page 2

In short, my opinion is that there has been no violation of the Commission's ex parte rule resulting from the memorandum. I will be happy to discuss this matter with you if you have any questions.

Sincerely,



Paul A. Bullis
Chief Counsel
Legal Division

PAB:mi
Attachment

cc: Commissioner-Chairman Jim Irvin
Commissioner Renz D. Jennings
Docket Control

INPAULWP601060398L1.WPD

JIM IRVIN
COMMISSIONER-CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER



JACK ROSE
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

MEMORANDUM - FOR INTERNAL DISTRIBUTION

To: Commissioner-Chairman Jim Irvin,
Commissioner Renz D. Jennings,
Commissioner Carl J. Kunasek
From: Steven S. Dickerson
Date: March 11, 1998
Subject: Electric Competition

The Electric Competition Rules accomplished the simplest part of the restructuring process - the destruction of the old regulatory regime. The Commission now faces the most difficult part of the restructuring process - building a market to replace it.

If the Commission does not take up this task, a market will evolve to fill the void. However, the evolution process may not provide the best possible solution for Arizona. In fact, I do not believe that the evolution process will provide benefits to residential customers, because the process is controlled by the incumbent utility companies, entering energy service providers, and the large industrials.

Therefore, if the benefits of restructuring are going to be reaped by the residential customers of Arizona, the Commission must be proactive in the designing of the market. Early and informed decisions on our part will prevent needless mucking through and ensure the greatest possible benefit for the electric power consumers.

Toward this end, I have attached three worksheets. The first worksheet describes different possible market mechanisms for the electric power industry. These are some of the possible answers to the question, "How will the market function?" The different approaches define the type of transactions that will be possible, where these transactions will take place, and what information will be seen (or not seen) in the new marketplace.

The second worksheet reviews market structure issues, or "Who will compete in the market, and what are their roles?" Prior to the rule changes, all utility activities were regulated. Now, some activities are competitive while others continue to be regulated. This creates incentive problems within the old vertically integrated utility companies: namely, cross-subsidization and access discrimination. Possible approaches to solving or mitigating these incentive problems are presented.

The third worksheet presents the different methods to calculate stranded costs. Although this is not directly related to the creation of a new market, this decision must be made to reconcile the past. During the stranded cost hearing, many variations of three basic approaches were proposed.

The three categories of approaches are: replacement value, net revenue lost, and divestiture. The outline briefly discusses the fundamentals of each approach.

Without further decisions by the Commission, a market will evolve on its own. However, it is unclear who would benefit from this evolution and whether regulators would need to continually revisit these issues during the evolution. If the Commission can guide the design of the market to benefit the public, I would strongly advocate the worthiness of the effort.

If you or your assistants would like to speech about these issues with me, please contact me at your convenience.

CC: Jack Rose

ENERGY MARKET ISSUES

The potential gains of restructuring lay in efficiency and innovation. Both are affected by the design of the market. Proponents of bilateral contracting claim that everyone can negotiate a better deal without a power exchange even though prices are not revealed. Proponents of a full-nodal price power exchange argue for the revelation of prices through the market. This ensures both efficiency in generation and efficiency in transmission pricing. In addition, under bilateral contracting residential consumers and other small users are disadvantaged in the negotiation of power contracts.

	<i>Bilateral contracts</i>	<i>ISO/PX California style</i>	<i>ISO/PX Pool</i>
<i>How power is bought, sold, and dispatched.</i>	Consumers contract for delivery of power from either Energy Service Providers or generators directly. Balanced schedules must be sent to the operator of the grid, presumably an ISO. Price information remains proprietary.	Power can be purchased directly from the PX or contracted from an Energy Service Provider. Each ESP sends a balanced schedule to the ISO for dispatch. The ISO must balance the entire system and redispatch any conflicting schedules. Only the PX price is revealed.	All power must be purchased from the pool. The market balances supply and demand at each node, and dispatches power at the market clearing price. Financial contracts based on the market price can emulate any possible bilateral contract, except prices are revealed.
<i>Efficiency - Generation</i>	Not guaranteed.	Not automatic. The ISO is under the requirement to dispatch generation at least cost. It is uncertain that the ISO can efficiently do this.	Guaranteed. All power is purchased from the pool. Lowest cost generation is dispatched first.
<i>Efficiency - Transmission</i>	Not guaranteed.	Not guaranteed. Rules must be developed to estimate, collect, and disperse loss charges. These rules would need to be gaming proof, since utilities could load individual nodes to increase revenue.	Guaranteed. All power is sold at the node. The prices at each node incorporate all physical system constraints. Transmission and congestion rents can then be allocated to infrastructure development.
<i>Load pockets - ancillary services</i>	The grid operator must control some generation for reliability and transmission.	The ISO has contracts with Must-Run generation facilities for reliability purposes as well as facilities in load pockets. This mitigates market power created by congestion.	The ISO would have Must-Run contracts with generation facilities for reliability purposes as well as facilities in load pockets. Markets for ancillary and other services may develop.
<i>Markets for green power</i>	Green-power is sold through contract. Individual consumers must choose from available ESPs offering green-power. The ESPs submit balanced schedules to the grid operator for dispatch.	Green-power is sold through contract. Individual consumers must choose from available ESPs offering green-power. The ESPs submit balanced schedules to the ISO for dispatch. Provisions for a secondary market for green-power could be incorporated into the PX.	A second market can easily be created for green power. Green-power consumers can purchase power generated with green technology at the market-clearing price. New technology can be immediately incorporated when cost effective.

MARKET STRUCTURE ISSUES

The Competitive Electric Rules the competitive generation of electricity while transmission and distribution services, essentially, remain regulated as before. Metering and billing activities are also to be opened up to competition. By creating competitive markets for some activities and continuing to regulate others, certain incentive problems are created. The two most critical incentive problems created are an incentive for the incumbent (or distribution company) to give preferential treatment to its competitive agent while discriminating against its competitors (access discrimination), and an incentive to pass costs to the regulated agent (cross-subsidization). Below is a summary of how these incentive problems can be regulated under several corporate forms.

	<i>Vertically integrated utility</i>	<i>Functionally separated affiliates</i>	<i>Separate corporate affiliates</i>
<i>Description</i>	All activities of the incumbent utility are retained in a single vertically integrated company.	All activities of the incumbent are retained in a single company, but the company reorganizes by activity.	All activities controlled through different companies under a single holding company.
<i>Regulation - Vertical market power Access Discrimination</i>	Rules need to be developed to prevent incumbent utilities from discriminating against other energy suppliers - open information rules and open access rules.	Affiliate rules must be developed to limit the favorable access to customers and information to the affiliated competitive energy provider.	Affiliate rules still necessary to ensure no preferential treatment is given to affiliate. Enforcement is easier, since all transactions are in the market.
<i>Regulation - Vertical market power Cross-subsidization</i>	Rules need to be developed to ensure that the competitive activities are not subsidized by regulated activities. Rules must be very specific.	Affiliate rules must be developed to ensure costs are not passed incorrectly between affiliates. Less specific rules are needed. However, this is difficult to monitor.	Affiliate rules still needed to prevent incorrect transfer pricing; however, the separate corporate form better aligns management's incentives to prevent cross-subsidization.
<i>Stranded costs - Calculation Concerns</i>	Stranded costs are recovered by the vertically integrated utility. If the incumbent is over-compensated for stranded cost, the incumbent will have a competitive advantage.	Assets must be correctly priced when transferred to each affiliate. If asset prices are not correct, one of the affiliates may have an advantage over its competitors.	Assets must be correctly priced when transferred to each affiliate. Massachusetts uses voluntary divestiture to ensure the assets are correctly priced.
<i>Regulation - Horizontal market power - this issue is closely linked with the Energy Market Issues and Divestiture. See below.</i>	If the incumbent utility retains control of all its generation assets, regulatory oversight is needed to prevent the firm from exercising market power. Coordination between generation and transmission assets can be used to game the system for higher profits. FERC is concerned whenever a single entity owns or controls both generation and the grid.	The separation of control between the generation assets and control of the grid reduces the potential for the exercise of market power, but regulatory oversight is still needed. FERC is concerned whenever a single entity owns or controls both generation and the grid.	Further separation of activities reduces the possibility of coordination of transmission and generation. If generation of assets are auctioned to several independent generators, the possibility of a single firm exercising market power is greatly reduced - see divestiture.
<i>Consumer Protection</i>	Supplier of last resort responsibilities remain with the incumbent utility. Rules need to be developed to ensure consumers are protected from unfair activities.	Supplier of last resort responsibilities are assigned to the affiliate providing regulated services. Rules need to be developed to ensure consumers are protected from unfair activities.	Supplier of last resort responsibilities are assigned to the regulated distribution affiliate. Rules need to be developed to ensure consumer are protected from unfair activities.
<i>State Regulatory Requirement</i>	IL, ME, MD, MI, NV, NH, NJ, PA	AZ, CA, MT, NY, OK, RI, VT	MA

STRANDED COST CALCULATION

The past must be reconciled, so the future can begin. Stranded costs must be calculated as accurately and immediately as possible. The recovery of these costs must be as competitively neutral as possible. Below are brief overviews of the various methods for calculating stranded costs. Many variations of each approach were proposed in written testimony for the stranded cost hearing.

<i>Calculation method</i>	<i>Replacement Value - Bottom-up</i>	<i>Net Revenue Loss - Top-down</i>	<i>Divestiture</i>
<i>What is being measured</i> or operationalized definition	Administratively determine a fair and reasonable value for each utility's generation assets, subtract the book value of the same assets.	Calculate the difference between the revenue, which the utility would have received under continued regulation, and the estimated revenue under competition.	Auction each utility's generation assets, subtract book value of the same assets from the proceeds. If negative, this is stranded costs.
<i>Administrative process</i>	The difference between the appraised value of the generation assets and the book value of the assets.	The NPV of the difference between the revenue stream under regulation and an estimate of the revenue stream under competition.	The difference between the true market value and book value of the assets.
<i>Mitigation</i>	A fair and reasonable value for each generation asset must be determined.	Two series of numbers must be estimated: the revenue stream under continued regulation and the revenue stream under competition. The success of this method is imprudently dependent upon the accurate estimation of the future market price of electric power.	No estimation of any value is necessary. By definition, the winning bid for an asset is its market value of that asset. Thus, the process involves the two known values: market value and book value. Auctions have already been successfully completed in several states.
<i>True-up</i>	Mitigation is only a concern before and during the appraisal stage. It would be in a utility's interest to influence the appraised value downward.	Utilities are compensated for the difference between their revenue under regulation and their expected revenue under competition. Utilities are free to use their assets as they see fit.	The only mitigation concern with divestiture is during the period prior to the auction. Utilities may not have incentives to mitigate losses (e.g. maintenance). If utilities have some rights to the auction revenue above book value, this incentive problem is mitigated.
	No true up is necessary. Under some versions of administrative valuation the calculation time period would be lengthened to incorporate future events.	A true-up process is necessary to link estimated competitive revenue streams with actual revenue streams. A potential problem is that stranded costs will then compensate for poor management during the calculation phase. APS's plan has no true-up.	No true-up is necessary.
<i>Main Proponent</i>	RUCO, AECC	APS, TEP	PG&E, Enron, Goldwater Institute

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June 2, 1998

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

VIA FACSIMILE

Mr. Ray Williamson
Acting Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Commissioner Kunasek's June 1 Letter to you;
Docket No. RE-00000C-94-0165

Dear Mr. Williamson:

Mr. Bullis faxed me Commissioner Kunasek's letter and the questions attached to it which were directed to me and others. I did not review it until this morning because I was out of the office yesterday.

As you know, together with others, I met with you, Mr. Rose, Ms. Alward, Ms. Hubbard and Messrs. Ahearn and Wallace on May 7, 1998. The meeting had been called by Mr. Rose to discuss what at that point was a four-point proposal by Staff on stranded costs, metering, affiliate organization and competition phase-in matters.

Also in attendance at the meeting were Mr. Curtis who represents Mohave and Navapache, Mr. Hughes and Mr. Mesho of Mohave and Navapache, Mr. Dabelstein of Citizens, Mr. Jones of Grand Canyon and Ms. Cooper of AEPCO. I believe this is a complete list of persons who attended the meeting.

As to Commissioner Kunasek's other question as to the outcome of the meeting, I would note that I was an active participant in the meeting, offering my clients' views and positions on these Staff proposals. For this reason, I did not take very detailed notes of what was actually said.

However, I have reviewed Mr. Marks' letter to you of May 14, 1998. With particular reference to the last paragraphs on page 3 of that letter, I agree with the statements set forth there that "Staff intended to have the Hearing Officer's Recommended Order 'pulled', with Staff's recommendation substituted for that

Mr. Ray Williamson
June 2, 1998
Page 2

order" and that Mr. Rose did indicate "the Commissioners supported Staff's new proposal." Another outcome was that Mr. Rose also advised me while the cooperatives were invited to provide written input on Staff's proposal, he could assure me that unless the cooperatives were willing to drop their lawsuits against the Commission, any of the cooperatives' suggested modifications to the Staff proposal would be "non-starters."

Very truly yours,



By

Michael M. Grant

Original and 10 copies
filed with Docket Control

cc: Chairman/Commissioner Jim Irvin (via hand delivery)
Commissioner Renz Jennings (via hand delivery)
Commissioner Carl Kunasek (via hand delivery)
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NOV 30 1998

ARIZONA SUPREME COURT

CLERK SUPREME COURT

STATE OF ARIZONA, ex. rel)
 GRANT WOODS, Attorney General;)
 RESIDENTIAL UTILITY CONSUMER)
 OFFICE, an Arizona Government Agency;)
 ARIZONA TRANSMISSION)
 DEPENDENT UTILITY GROUP, an)
 Arizona Association, ELECTRICAL)
 DISTRICT NO. 3 of PINAL COUNTY,)
 an Arizona Electric District;)
 ELECTRIC DISTRICT NO. 7 OF)
 MARICOPA COUNTY, an Arizona)
 Electric District; MARICOPA)
 COUNTY MUNICIPAL WATER)
 CONSERVATION DISTRICT, an)
 Arizona Water Conservation District;)
 IRRIGATION AND ELECTRIC)
 DISTRICT ASSOCIATION OF)
 ARIZONA, an Arizona association,)
)
 Petitioners,)
)
 vs.)
)
 ARIZONA CORPORATION)
 COMMISSION, an Arizona Government)
 Agency,)
)
 Respondents.)

VERIFIED PETITION FOR
SPECIAL ACTION AND
WRIT OF MANDAMUS

VERIFIED PETITION FOR SPECIAL ACTION AND WRIT OF
MANDAMUS

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INTRODUCTION

The delivery of electric power in Arizona is about to radically change from monopoly to competition. The Arizona Corporation Commission (the "Commission") is attempting to implement the most significant aspects of the change without meaningful input from the State, from electricity consumers large and small, and from new competitors. If this Court does not act now, in a matter of days, the Commission will have entered orders that will burden Arizona's economy and for decades. After closed-door meetings, improper *ex parte* contacts and insufficient and unlawful notice, on a fast track procedure that does not come close to due process, the Commission's orders will tax Arizona ratepayers with billions of dollars and will implement a structure that could completely forstall competition.

On November 5, 1998 the Staff of the Commission ("Staff") entered into settlement agreements (the "Agreements") that had been negotiated behind closed doors between Arizona Public Service Company ("APS") and Tucson Electric Power Company, Inc., ("TEP") to resolve key issues in the transition to competition in retail electric energy sales in Arizona. Among the key issues are the methodology and amount of so-called "stranded costs", (the amounts claimed by utilities to be the value of lost investments which the government promised would be recovered), caused by the introduction of competition. If too little is awarded in

stranded costs, investors suffer, and if too much is awarded, electric energy consumers, competitors and the competitive market suffers. Another key issue is market power, which in antitrust parlance is the power to raise prices and keep them high without loss of market share.

The Agreements restructure the industry and purport to resolve all issues in various Arizona Corporation Commission (the "Commission") dockets including stranded costs, unbundled tariffs and market power. The Agreements award the utilities an estimated \$2 billion in stranded costs to be paid by Arizona energy consumers over the objections of all parties representing individual, commercial and industrial electric consumers and upon a flawed and injurious methodology. The Agreements also: 1) award 100% of APS's and TEP's claimed stranded costs on partial divestitures contrary to Commission Rules, 2) settle the State's pending Superior Court appeal without the consent of the State, 3) create a new transmission monopoly in contravention of the Arizona Constitution, 4) increase market concentration in electric generation, 5) facilitate collusion, and 6) purport to alleviate antitrust market power issues all at once.

Now, after four years' study of the issues, two years of rule making, one stranded costs evidentiary hearing and decision which has been properly appealed by the Attorney General, and over the objection of virtually every party other than

those who negotiated the secret Agreements, the Commission, overruling its own chief hearing officer, has ordered that Petitioners herein have four working days to prepare for an evidentiary hearing on these complicated and far-reaching settlements. Absent this Court's intervention, the hearings to determine whether the Agreements are in the public interest will begin December 3, 1998 in a feverish rush to judgment following improper *ex parte* contacts between Commission Staff, APS, TEP and individual Commissioners. The Commission's procedural order dated November 25, 1998 would, if not vacated, deny Petitioners procedural due process and work a gross injustice on the State and on all residential, commercial and industrial electric energy consumers within the State. Based on public pronouncements, Petitioners have good reason to believe that the Agreements will be approved by the Commission no later than December 5, 1998.

The Attorney General and the other Petitioners, representing electric energy and services consumers and competitors assert that by establishing this procedure the Commission has failed to exercise discretion which it has a duty to exercise; has proceeded and is threatening to proceed in excess of its jurisdiction and legal authority, and has acted arbitrarily and capriciously within the meaning of Rule 3 of the Special Action Rules of this Court. Petitioners seek a statutory writ of mandamus under A.R.S. § 40-254(F) and pursuant to the more general A.R.S. §

12-2021 vacating the procedural order and directing the Commission to afford Petitioners at least an additional ninety days to prepare for, and to conduct, full and fair evidentiary hearings on these momentous Agreements.

JURISDICTIONAL STATEMENT

This Court has original jurisdiction to issue a statutory writ of mandamus directed to the Arizona Corporation Commission under A.R.S. § 40-254(F). This Court also has original jurisdiction to issue extraordinary writs against state officers in matters involving questions of statewide importance, Ariz. Const. art. 6 § 5; A.R.S. §12-2021; Rule 4, Ariz. R. P. Sp. Act; *see also, Arizona Corp. Comm'n. v. State ex rel Woods*, 171 Ariz. 286, 287-88, 830 P. 2d 807, 808-809 (1992). And, this Court has original jurisdiction in *certiorari* where the issue, if not resolved on special action, would involve an invasion of the appellate authority of the Court. *Whitfield Transportation v. Brooks*, 81 Ariz. 136, 141, 302 P. 2d 526, 529 (1956). Special action relief from this Court is appropriate here because of the statewide interest in the resolution of the economic issues involved in the move to retail electric competition, specifically regarding the amount Arizona ratepayers will be charged for "stranded costs" and in the future structural ability of the relevant markets to produce the desired competition. The conduct complained of here raises serious questions of whether the Commission is denying procedural due process,

usurping the jurisdiction of the Superior Court and the appellate processes of this Court and violating State constitutional and statutory protections afforded consumers of electric energy.

This Court should take jurisdiction of this case now because, for several reasons, it is uniquely suited to resolve this legal dispute between the Attorney General, Arizona ratepayers and stakeholders and the Corporation Commission. First, in a matter of days, the Commission is likely to approve the Agreements that would restructure Arizona's electric energy markets upon a forced, inadequate and truncated process that involves improper *ex parte* contacts with a Commissioner and which would otherwise deny the State and the other energy consumer petitioners their right to a full and fair hearing. *See State ex rel Corbin v. Arizona Corp. Comm'n*, 143 Ariz. 219, 224, 362 P. 2d 362, 367 (1984). This process violates relevant portions of the Administrative Procedures Act as it applies to the Commission, *e. g.*, A.R.S. § 41-1022, 41-1061, 41-1092.02. The November 25, 1998 order has been imposed in part to deprive the Superior Court of jurisdiction and the order operates to deprive this Court of its appellate review powers, (*see, Whitfield Transportation v. Brooks*, 81 Ariz. at 141, 302 P. 2d at 529). The Commission's process would impair the Attorney General's claims in *State ex rel Woods v. Arizona Corporation Commission*, No. CV98-16025 (filed September 2,

1998), now pending in Maricopa County Superior Court. Petitioners lack a plain, adequate and speedy remedy at law because the Commission has arbitrarily and capriciously exceeded its jurisdiction, and if the proceedings challenged here go forward in contravention of notions of fairness and constitutional and statutory consumer protections, the Commission could, on an inadequate and incomplete record, wrongfully tax Arizona with hundreds of millions of dollars in stranded costs and will restructure the electric industry in a way that will prevent the development of true competition to the detriment of energy consumers.

Second, the case rests on the application of legal principles, rather than controverted issues of fact, which is an important factor in exercising special action jurisdiction. *See University of Arizona Health Sciences Center v. Superior Court*, 136 Ariz. 579, 581, 667 P. 2d 1294, 1296 (1983). Third, the due process issues involve Commission regulation of affiliate transactions which are matters of great public importance. *Arizona Corp. Comm'n. v. State ex rel Woods*, 171 Ariz. at 295, 830 P. 2d at 816. Fourth, these important state questions will be not be resolved in Superior Court, since, because of intermediate action by the Commission, that court has already determined that it has no jurisdiction to grant

the relief sought. ¹ *State ex rel Woods v. Arizona Corporation Commission*, Civil No. 98-1065, order dated November 25, 1998. (Minute entry, Attachment A).

STATEMENT OF THE ISSUES

Whether the Arizona Corporation Commission a) has failed to exercise discretion to afford the procedural due process which it has a duty to afford; b) has proceeded or is threatening to proceed in contravention of the State constitution, relevant statutes and rules in excess of its jurisdiction and legal authority, or c) has acted arbitrarily and capriciously by adopting and moving forward with the procedural order of November 25, 1998, establishing a four (4) day rush to judgment leading to its likely approval of complex multi-billion-dollar contracts which cannot be determined to be in the public interest within the time allowed. And, whether the Commission can properly implement this fast-track procedure given the record of improper *ex parte* personal contacts between APS, TEP, Staff and individual Commissioners, given that the State, other Petitioners and one Commissioner were excluded from negotiations, where the Commission overruled

¹ The Superior Court found that it had no jurisdiction because of the application of A.R.S. § 40-254(F). However the section specifically recognizes this Court's authority to enjoin a Commission order:

Except as provided by this section no court of this stat shall have jurisdiction to enjoin, restrain, suspend, delay or review any order or decision of the commission, ... but a writ of mandamus shall lie from the supreme court to the commission in cases authorized by law.

its own chief hearing officer at an "open meeting", thereby defeating Superior Court jurisdiction over a pending application for a writ of mandamus and where the procedure denies Petitioners a fair opportunity to prepare, to be heard and to cross examine witnesses on key public interest issues of market power and stranded costs determination, all of which is contrary to the Arizona Constitution art. 2 § 4, and art. 14 § 15, the Administrative Procedures Act, A.R.S. § 41-1001 *et. seq*, and the Commission's own Rules, R14-3-104(A), (D).

STATEMENT OF THE FACTS

1. On about December 26, 1996, the Commission amended its Rules and enacted a set of new Rules intended to set forth the terms and conditions for the deregulation (also called "restructuring") of retail sales of electric energy in the State of Arizona. Commission Rules R14-2-203 through R14-2-1618.

2. In January, 1998, the Commission ordered evidentiary hearings on the key issue of stranded costs which occurred in February 1998. Petitioners participated in the stranded cost hearings. The evidence and argument in these hearings was limited to matters relevant to the methodology for calculating stranded costs. Market power and competitive issues were not addressed.

3. Following the hearings and post-hearing briefing, the chief hearing officer issued a draft opinion and order to which the Attorney General filed exceptions

specifically relating to stranded costs. The draft opinion was amended and presented to the Commission who approved it on about June 22, 1998 as decision no. 60977. The Attorney General timely filed a motion for reconsideration, pursuant to A.R.S. § 40-254 (A) and, upon its denial, timely filed his complaint in *State ex rel Woods v. Arizona Corporation Commission*, No. CV98-16025, alleging Decision No. 60977 was arbitrary, capricious, unreasonable and unlawful in that it contravened the Commission's own Competition Rules, created new, regulatory barriers to competition in the deregulated markets and permitted anticompetitive barriers to entry to continue, would result in awards for stranded costs for which there was no bona fide legal justification, exceeded the authority of the Commission, levied an unlawful tax on electricity users and consumers within the State and denied procedural due process. (Complaint, Attachment B.)

4. Between about October 30, 1998, the Attorney General's office became aware that some sort of deal had been reached between the Commission staff and the two (2) utilities. Between then and November 5, 1998, APS, Staff and TEP would not answer the Attorney General's questions about the Agreements.

5. On November 5, 1998, the Agreements were publicly announced and Petitioners learned that the agreements involved potentially billions of dollars in stranded costs payments to TEP and APS, as well as transmission and generation

asset transfers that appeared to interfere with the development of a competitive market and which raised serious issues about vertical and horizontal market power. Portions of the agreements were missing or contained blanks. (Copies of the Agreements are Exhibits 1 and 2 to Attachment C).

6. Commission Staff immediately issued a request for a procedural order that called for a hearing on the Agreements on November 20, 1998. (Attachment C, Exhibit 3.) Petitioners, among others, objected and asked for more time.

7. Other Procedural Orders were issued extending the time for filing testimony, but not setting a hearing. (Attachment C, Exhibit 4.) The Attorney General and other intervenors immediately issued discovery requests in an effort to gain information about the competitive effects of the deal. APS, TEP and Staff objected to many of the Attorney General's data requests. (Attachment D, example of APS's objections.)

8. Staff then requested a procedural order asking for shortened time to file testimony and seeking a hearing on December 3, 1998. (Attachment C, Exhibit 6.)

9. The Attorney General therefore filed a motion for continuance on November 19, 1998, sought an expedited ruling no later than November 23, 1998, in which the other Petitioners, and other interested parties, joined. (Attachment C, Exhibit 7.)

10. At about 3:40 p.m. on Monday, November 23, 1998, the Commission's chief hearing officer issued a Procedural Order (Attachment C, Exhibit 8) setting oral argument on the motion to continue for Tuesday, November 24, 1998, at 1:30 p.m. The order did not set a hearing.

11. On November 24, 1998, before the time set for the hearing on the State's motion to continue, the hearing officer issued a procedural order setting the hearing for December 7, 1998. This order specifically found that a shorter time to hearing would in fact "prejudice the intervenors". (Attachment D, page 4, l. 3-4.) Petitioners, among others, objected to the December 7th procedural order, citing a lack of time to adequately prepare, incomplete discovery, serious issues of market power raised for the first time, and other fundamental fairness issues. Commission Staff requested, and APS and TEP advocated, a further shortened hearing schedule to begin December 3, 1998.

12. Commissioner Carl Kunasek stated of record during the November 24, 1998 hearing that he had been excluded from information regarding the Agreements, and circulated a letter alleging that Commissioner Renz Jennings had made improper contact with APS and TEP to solicit political campaign funds. Commissioner Kunasek also stated that he had not been consulted for his availability to attend various proceedings. (Attachment C, Exhibit 11.)

13. Sometime before the November 24th continuance hearing, the Commission scheduled an "open meeting" for November 25, 1998. The open meeting notice was not lodged in the relevant dockets and was not served on Petitioners or other parties. The agenda identified three matters at issue, including the procedures for approving the Agreements, and stated that the Commission may consider and vote on these matters. (Attachment C, Exhibit 10.)

14. The Attorney General prepared a motion for a writ of mandamus and temporary restraining order the night of November 24, 1998, to be filed in *State ex rel Woods v. Arizona Corporation Commission*, No. CV98-16025. (Attachment C.) While giving notice to Commission counsel that the Attorney General would be seeking relief from the Superior Court at 8:27 a.m. on November 25, 1998, an Assistant Attorney General asked whether there might be a vote on any of the relevant matters at the open meeting. His answer was "yes".

15. The Attorney General served his motion for a writ of mandamus/temporary restraining order on the Commission and intervenor TEP at about 9:40 a.m. and filed the papers with the Superior Court at about 10:15 a.m.. At about 11:00 a.m., during the hearing at which the Commission, TEP and APS appeared by telephone, Commission counsel announced that two members of the Commission had voted to overrule the chief hearing officer's procedural order and

to grant Staff's request for a hearing on December 3, 1998 thereby further shortening the time to hearing.

16. The Commission's open meeting order further shortened the time given Petitioners to file testimony by half a day and was entered November 25, 1998, the day before the Thanksgiving holiday weekend. (Attachment E.)

17. The Commission's open meeting procedural order caused the Superior Court to find on November 25, 1998, that it was without jurisdiction on the mandamus. (Attachment A.)

18. Petitioners assert that the Agreements raise serious issues regarding stranded cost recovery through charges to Arizona electric consumers, whether the restructuring will hamper competition and antitrust issues such as vertical market power, the possibility of horizontal market power and the facilitation of collusion the will impact Arizona and its citizens for decades. Each of these issues requires careful economic and legal evaluation and cannot be fully analyzed by December 3, 1998.

ARGUMENT

I. THE NOVEMBER 25, 1998 PROCEDURAL ORDER DENIES PETITIONERS PROCEDURAL DUE PROCESS AND IS AN ABUSE OF DISCRETION

A. The Commission has a Legal Duty to Afford Procedural Due Process in

this Contested Case

The Corporation Commission has a constitutional duty to enter orders that are "just and reasonable." *Trico Elec. Coop., Inc. v. Senner*, 92 Ariz. 373, 385, 377 P. 2d 309, 319 (1962). The evidentiary adjudication of contested cases by the Commission is a quasi-judicial function which obliges the Commission to afford full constitutional due process to all parties thereto. *State ex rel Corbin v. Arizona Corp. Comm'n*, 143 Ariz. at 224, 362 P. 2d at 367.² Mandamus will lie to compel the Commission to perform this, or any other legal duty.

The process to which Petitioners are entitled must involve a full hearing, *State ex rel Corbin v. Arizona Corp. Comm'n*, 143 Ariz. at 224, 362 P. 2d at 367, conformance with the Administrative Procedures Act, A.R.S. §§ 41-1061, 41-1062, and compliance with Commission Rules, R14-3-104(A), (D) all of which require affording parties a meaningful opportunity to present evidence and to cross-examine witnesses. This includes the right to have the adjudication based on the evidence in the record and not on extra-judicial facts or considerations. *State ex*

² The Corporation Commission cases cited herein involved ratemaking cases or interference with a Certificate of Convenience and Necessity. While the Agreements at issue in this special action are neither, they nevertheless involve a substantial property right - the dollars Arizona ratepayers will have unlawfully confiscated if the Commission over-awards stranded costs. The State asserted in its complaint in the Superior Court that the Commission's stranded cost order amounted to an unlawful tax in aid of a public service corporation in violation of Ariz. Const. art. 9 § 14.

rel Corbin v. Arizona Corp. Comm'n, 143 Ariz. at 224, 362 P. 2d at 367.

B. The November 25, 1998 Procedural Order, and its Precedents, Deny Petitioners Procedural Due Process and are an Abuse of Commission Discretion

A basic tenet of fairness and due process are that there be no improper *ex parte* contacts that could influence the Commissioners sitting as judges. Here, one Commissioner accuses another, of improper *ex parte* contacts between APS and TEP who stand to gain billions of dollars from the adjudication of the Agreements. Such contacts clearly violate the due process rights of those excluded from the contacts, and requires a remedy that eliminates the potential for bias or prejudice from the *ex parte* contacts. This violation occurs and must be cured even when the contacts are merely between Staff and the benefitting utilities. The prejudice to Petitioners is even more compelling where the contacts are between a Commissioner and an interested utility and involve a *quid pro quo*. *State ex rel Corbin v. Arizona Corp. Comm'n*, 143 Ariz. at 228, 362 P. 2d at 371.

Even without the compelling prejudice following from improper contacts, Petitioners have a complete and immediate right to the rights demanded here, namely procedural due process incorporating the right to a meaningful hearing and the development of a sound record for adjudication and possible appeal.

The Administrative Procedures Act, A.R.S. § 41-1001, *et. seq.* applies to Commission contested proceedings. *State ex rel Corbin v. Arizona Corp. Comm'n*, 143 Ariz. at 225, 362 P. 2d at 368 . The APA codifies certain procedural due process rights, such as the opportunity to respond, to present evidence and argument on "all issues". A.R.S. § 41-1061. It also gives parties the right to cross-examine witnesses. A.R.S. § 41-1062. The November 25, 1998 procedural order denies those rights in a number of ways. First, the order permits Staff, APS and TEP to file rebuttal testimony by 4:00 p.m. on Wednesday, December 2, 1998 and requires petitioners to be prepared to cross-examine them by 8:00 a.m. the following morning. Petitioners anticipate, and raised before the Commission, that they will see rebuttal testimony on crucial issues of market power for the first time the night before cross-examination commences. Moreover, Staff, APS and TEP have been given the right to supplement this testimony from the witness stand. Petitioners have been given no such right. Second, the complex issues raised for the first time by the Agreements require considerable time to analyze and understand. On the question of transmission market power alone the Attorney General argued before the Commission on November 24, 1998, defining the relevant geographic market requires a full record of transmission constraints and "load pockets" on the transmission lines.

Third, the notice given November 25, 1998, the day before a holiday weekend, commencing a complex evidentiary hearing four (4) businesses days hence is not adequate notice. The A.P.A. requires 20 days' notice, A.R.S. § 41-1061(A) and while the Commission Rules provide for ten days' notice, R14-3-104(D) and allow the Commission by order to shorten the time, they are subject to a longer period where required by law. No rules allow a contested case to be called to hearing in four days, and the Commission has no discretion to do so where procedural rights would be violated thereby.

Finally, the Agreements purport to waive many of the affiliate reporting rules that this Court found so important in connection with the industry restructuring occurring at the time in *Arizona Corp. Comm'n. v. State ex rel Woods*, 171 Ariz. at 295, 830 P. 2d at 816. While it may be that the move to deregulation requires the abandonment of some rules, where the utilities remain vertically integrated in whole or in part, "waiving" the affiliate reporting rules is tantamount to repealing them without the procedural protections found in the Administrative Procedures Act. *E.g.*, A.R.S. §§ 41-1021 through 41-1035. The justness of waving those rules requires study and a fair hearing.

The Commission's basic responsibility is consumer protection. To effect that responsibility, the Commission has a constitutional duty to enter only "just and

reasonable” orders. *Trico Elec. Coop., Inc. v. Senner*, 92 Ariz. at 385, 377 P. 2d at 319. The Commission exceeds its power when it issues orders that are unreasonable. *Arizona Corp. Comm’n. v. State ex rel Woods*, 171 Ariz. at 295, 830 P. 2d at 816. Electric utility restructuring, which involves affiliate transactions, carries the potential for holding company abuse such as unrecorded cross-subsidization, is particularly dangerous for energy consumers.

The Commission was not designed to protect public service corporations and their management but, rather, was established to protect our from the result of speculation, mismanagement and abuse of power.

Arizona Corp. Comm’n. v. State ex rel Woods, 171 Ariz. at 291-292, 830 P. 2d at 812-813.

— C. The Commission’s November 25, 1998 Procedural Order Invades the Jurisdiction of the Superior Court and this Court’s Appellate Review Powers —

The Attorney General perfected his appeal of Decision No. 60977 on September 2, 1998. While the action was pending, Commission Staff, behind closed doors, without notice to and excluding the Attorney General, “settled all issues arising out of Decision No. 9077.” (Attachment C, Exhibits 1, 2.) Worse, the Commission entered the November 25, 1998 procedural order while the Attorney General was physically before the Superior Court seeking to vacate the

November 24, 1998 procedural order and right after the Commission was served with the motion for mandamus/temporary restraining order.

These actions in fact had the effect of depriving Superior Court of jurisdiction. (Attachment A.) By ignoring the State's appeal under A.R.S. § 40-254(A), the procedural order forces adjudication of the issues arising out of Decision 60977 without Attorney General consent and the order will make the State's appeal an "empty shadow", *Whitfield Transportation v. Brooks*, 81 Ariz. at 139, 302 P. 2d at 528, thereby depriving this Court of meaningful appellate review. This Court has held that the Commission is deprived of jurisdiction over an order or proceeding once an appeal is perfected. *Whitfield Transportation v. Brooks*, 81 Ariz. at 141, 302 P. 2d at 529. This Court also held in *Trico Elec. Coop., Inc. v. Senner*, 92 Ariz. at 385, 377 P. 2d at 319, that a Commission procedural order entered after a petition for mandamus is filed and pending is void as an improper attempt to deprive the court of jurisdiction. The Commission's action in entering a procedural order while the mandamus was being presented to the Court was a "direct invasion" of appellate jurisdiction and is unreasonable and unjust. *Whitfield Transportation v. Brooks*, 81 Ariz. at 141, 302 P. 2d at 529.

II. A WRIT OF MANDAMUS CURING THE DUE PROCESS DEFECT IS
THE ONLY MEANINGFUL REMEDY

The State and the other Petitioners have exhausted every reasonably avenue to secure fairness in the matter complained of. The State filed suit to appeal the methodology for awarding stranded costs pursuant to A.R.S. § 40-254(A). Petitioners joined in the State's motion for a continuance and demonstrated severe prejudice (as found by the Commission's own chief hearing officer) to the Commissioners themselves. The State sought the aid of the Superior Court judge assigned to its appeal to no avail. An appeal after the Commission adopts the Agreements, and sets in the concrete of a binding contract major structural changes and entitlements, will come too late to remedy the procedural defects. The State's Superior Court appeal does not afford a plain speedy and adequate remedy which will bar this action. *Metropolitan Lines v. Brooks*, 70 Ariz. 344, 345-346, 220 P. 2d 480, 481 (1950). No other court or tribunal can set aside the prejudicial procedural order save this Court on a special action for mandamus. A.R.S. § 40-254(F).

Petitioners herein are without any plain, speedy and adequate remedy at law if the procedural order setting the APS/TEP Agreements for truncated hearing on December 3, 1998 is enforced. If nothing else, the denial of discovery to Petitioners is enough to warrant a mandamus and the equally appropriate grant of

certiorari. *Phelps Dodge Corp. v. Superior Court*, 7 Ariz. App. 277, 280, 438 P. 2d. 424, 427 (1968). Here, a mandate declaring the November 25, 1998 procedural order void, (*see, Trico Elec. Coop., Inc. v. Senner*, 92 Ariz. at 385, 377 P. 2d at 319) and directing the Commission to desist from enforcement of the order *pendent lite* of this petition is the proper remedy. *Whitfield Transportation v. Brooks*, 81 Ariz. at 139, 302 P. 2d at 528. In fact, the Commission cannot properly enter any procedural order that gives Peitioners less than adequate time to assess, evaluate, conduct discovery and prepare for cross-examination of witnesses on the far-reaching consequences of the Agreements on ratepayers, on competition and on the economy of this state.

CONCLUSION

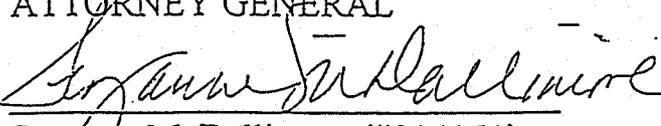
While the Commission ordinarily has discretion over its own procedure, that discretion is constrained by the constitutional mandate of due process, Ariz. Const. art. 2, § 4, by the anti-monopoly provisions of the Arizona Constitution, Art. 14 § 15, by the Administrative Procedures Act, A.R.S. § 41-1001, *et. seq.*, by the right of the Attorney General to a meaningful appeal, A.R.S. § 40-254(A), by the Commission's procedural rules, R14-3-104, and by the appellate and equitable jurisdiction of the Superior Court and of this Court A.R.S. §12-2021. Where the public official is bound by law to exercise his discretion in a particular manner,

mandamus will lie to compel him to follow his legal duty. *State Bd. of Barber Examiners v. Walker*, 67 Ariz. 156, 165, 192 P. 2d 723, 729 (1948). Where the Commission acts in contravention of these limitations, and where severe prejudice results from that abuse of Commission power, a writ of mandamus lies from this Court to cure the unlawful procedure. A.R.S. §40-254(F). See, *Arizona State Highway Comm'n v. Superior Court*, 81 Ariz. 74, 77, 299 P. 2d 783, 785 (1956).

Petitioners lack a plain, speedy and adequate remedy at law. Therefore, a writ from this Court is the final, and only, relief that will prevent serious and irreversible prejudice to the State, its economy and its residential, commercial and industrial electric energy consumers.

RESPECTFULLY SUBMITTED this 30th day of November, 1998.

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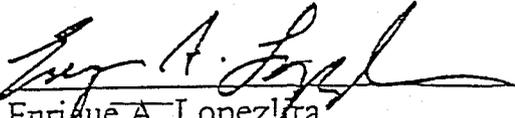
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Attorneys for Arizona Transmission
Dependent Utility Group, Arizona
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County Municipal Water Conservation
District) and Irrigation and Electric
District Association of Arizona

VERIFICATION

Enrique A. Lopezlira, being first duly sworn, verifies that he is employed by the Arizona Attorney General's office as an antitrust economist and is personally familiar with the record of proceedings in Arizona Corporation Commission Dockets Nos. E-01345A-98-0473, E-01345A-97-773 and RE-00000C-94-0165, No. E-01933A-98-0471 and E-01933A-97-0772, that he personally attended the hearing on the State's Motion for Continuance, that he has reviewed record in and is familiar with the facts of contacts with Corporation Commission Staff regarding the State's Motion for a Writ of Mandamus/Temporary Restraining Order, that he has read the proposed Settlement Agreements between APS and TEP and Commission Staff, and that these agreements on their face present serious antitrust issues involving stranded costs, market power, new monopoly creation, further concentration in various markets and the facilitation of collusion. Therefore he affirms that the foregoing statement of facts is true and correct.

Dated this 30th day of November, 1998.

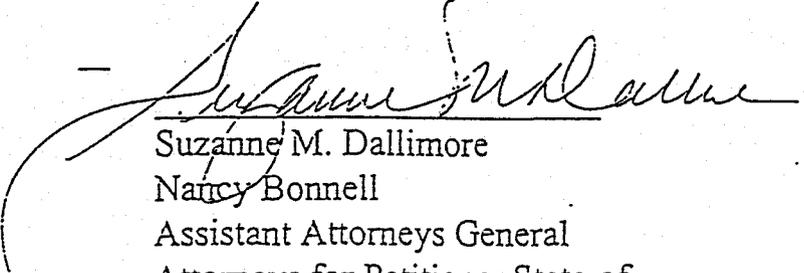

Enrique A. Lopezlira
Economist

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 14, Arizona Rules of Civil Appellate Procedure, the undersigned counsel certifies that this brief uses nomospaced typeface at 10 characters per inch, and contains 29 page, excluding the tables of contents and citations, the certificate of service and this certificates and any attachments, and any attachments.

RESPECTFULLY SUBMITTED this 30th of November, 1998.

GRANT WOODS
Attorney General



Suzanne M. Dallimore
Nancy Bonnell
Assistant Attorneys General
Attorneys for Petitioner State of
Arizona

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Hearings

JACK ROSE
EXECUTIVE SECRETARY



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AZ CORP COMMISSION

ARIZONA CORPORATION COMMISSION
Nov 30 3 17 PM '98

Direct Line: (602)542-4143
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November 30, 1998

E-01345A-98-0473

E-010345A-97-0073

E-01933A-98-0471

E-01933A-97-0772

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DEC 01 1998

ARIZONA CORPORATION COMMISSION
HEARING DIVISION

Mr. Jack Rose
Executive Secretary
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Dear Jack,

I would like to take this opportunity to commend and thank Commission Staff for their hard work in reaching a proposed settlement with Arizona Public Service and Tucson Electric Power intended to help facilitate electric competition in Arizona at the beginning of next year. I understand that Staff negotiated on some nights and weekends for nearly four months in formulating this agreement, and each should be commended for his or her efforts. Although I realize the complexity of the issues surrounding deregulation, I remain strongly committed to the scheduled introduction of competition beginning next year.

As you are aware, the proposed settlement has been met with considerable opposition from business and consumer interests alike. I've recently met with representatives of industrial firms most affected by competition, and their questions surrounding the proposed settlement merit strong consideration. While I anticipate that much more information will be forthcoming as a result of the hearing process, Commission Staff must be ready to respond to the many outstanding questions which must be resolved prior to acceptance of the proposal. And, while the proposed settlement may resolve outstanding issues between the parties to the agreement, there needs to be full disclosure on the projected effects it will have on businesses, industrial firms and residential consumers throughout the state.

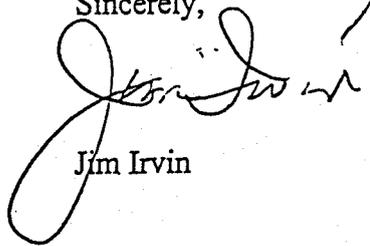
In remaining committed to the scheduled introduction of competition at the beginning of 1999, what options are available to the Commission should we find the proposed settlement unacceptable? What process must the Commission implement to allow for unbundled tariffs and adoption of an interim CTC recovery schedule? And, under existing rules, if generation assets are not divested, what sort of market generation adders would be needed to achieve a zero stranded cost recovery? Please respond to these concerns at your earliest convenience.

November 30, 1998

Page 2

As the time for competition draws close, we must prepare for the various outcomes which can result from either acceptance or rejection of the proposed settlement. Once again, we must call upon Staff for their expertise and effort to establish a solid foundation for competition.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Irvin", written in a cursive style.

Jim Irvin

cc: Commissioner Renz Jennings
Commissioner Carl Kunasek
Commissioner-elect Tony West

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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION

JIM IRVIN
Commissioner/Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

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DOCUMENT CONTROL

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION) DOCKET NO. E-01993A-98-0471
OF TUCSON ELECTRIC POWER)
COMPANY FOR APPROVAL OF ITS)
PLAN FOR STRANDED COST)
RECOVERY)

IN THE MATTER OF THE FILING OF) DOCKET NO. E-01993A-97-0772
TUCSON ELECTRIC POWER COMPANY)
OF UNBUNDLED TARIFFS PURSUANT)
TO A.A.C. R14-2-1601 ET SEQ.)

IN THE MATTER OF COMPETITION IN) DOCKET NO. RE-00000C-94-0165
THE PROVISION OF ELECTRIC)
SERVICES THROUGHOUT THE STATE)
OF ARIZONA)

IN THE MATTER OF THE APPLICATION) DOCKET NO. E-01345A-98-0473
OF ARIZONA PUBLIC SERVICE)
COMPANY FOR APPROVAL OF ITS)
PLAN FOR STRANDED COST)
RECOVERY)

IN THE MATTER OF THE FILING OF) DOCKET NO. E-01345A-97-0773
ARIZONA PUBLIC SERVICE COMPANY)
OF UNBUNDLED TARIFFS)
PURSUANT TO A.A.C. R14-2-1601 ET SEQ.)

**ARIZONA ELECTRIC POWER COOPERATIVE, INC.'S
RESPONSE TO STAFF'S REQUEST FOR PROCEDURAL ORDER**

Arizona Electric Power Cooperative, Inc. ("AEPSCO") and its counsel have only been able to receive in the past few hours a complete copy including the exhibits of the two Notices of Filing in these dockets. The Notices are wide ranging covering, among other things, the following:

GALLAGHER & KENNEDY
A PROFESSIONAL ASSOCIATION
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PHOENIX ARIZONA 85004-3020
18021 530-6000

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- Unbundled Rates.
- Regulatory Asset Recovery.
- Stranded Cost Recovery.
- Divestiture.
- A statement that a Tucson Electric Power ("TEP") affiliated company known as Transco "will acquire all transmission facilities owned by TEP, APS, SRP, AEPCO and others..."
- A template for future transmission pricing policies.
- FERC transmission issues.
- ISA/ISO matters.
- Must run assets.
- Amendments to the Commission's Electric Competition Rules.
- Issues concerning the Commission's Integrated Resource Planning and Affiliated Rules.

All of these issues are complex. Their resolution will have major impacts on Arizona, generally, and AEPCO, its member distribution cooperatives and their customer/owners, specifically.

In light of this, Staff's suggestion that testimony/comments be filed by November 17, a hearing be held on November 20 and the Commission vote on these complex matters at the conclusion of the hearing without briefing is ludicrous. Apparently, Staff, TEP and APS have been discussing these matters for several months. To allow interested parties only a few days to analyze the results and formulate and present their positions is unfair, irrational and a clear violation of due process. Some of these concepts may have merit. But, on this suggested timetable, the parties, the Hearing Officer and the Commission will have no reasonable opportunity to ascertain that.

AEPCO would suggest that parties be given at least until December 1 to analyze this data and submit suggestions at that time for a more rational hearing schedule and procedure.

1
2 RESPECTFULLY SUBMITTED this 10th day of November, 1998.

3 GALLAGHER & KENNEDY, P.A.
4

5
6 By Michael M. Grant
7 Michael M. Grant
8 2600 North Central Avenue
9 Phoenix, Arizona 85004-3020
10 Attorneys for Arizona Electric Power
11 Cooperative, Inc.

12 Original and ten (10) copies
13 of the foregoing document filed
14 this 10th day of November, 1998, with:

15 Docket Control
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 Copy of the foregoing document
20 hand delivered this 6th day of
21 November, 1998, to:

22 Paul A. Bullis, Esq.
23 Christopher Kempsey, Esq.
24 Janice Alward, Esq.
25 Janet Wagner, Esq.
26 Legal Division
27 Arizona Corporation Commission
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Mr. Ray Williamson
Acting Director, Utilities Division
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Copy of the foregoing document
faxed and hand delivered this
10th day of November, 1998, to:

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Jerry Rudibaugh, Esq.
Chief Hearing Officer
Hearing Division
Arizona Corporation Commission
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Phoenix, Arizona 85007

Copy of the foregoing document
mailed this 12 day of November, 1998, to:

All parties in Docket Nos. E-01993A-98-0471,
E-01993A-97-0772, E-01345A-98-0473,
E-01345A-97-0773 and RE-00000C-94-0165,

J. Heir

#663061 v1 - Stranded Cost

GALLAGHER & KENNEDY
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Legal

BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
COMMISSIONER-CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

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LEGAL DIV.
ARIZ. CORPORATION COMMISSION

DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS PLAN FOR
STRANDED COST RECOVERY.

DOCKET NO. E-01933A-98-0471

IN THE MATTER OF THE FILING OF
TUCSON ELECTRIC POWER COMPANY OF
UNBUNDLED TARIFFS PURSUANT TO
A.C.C. R14-2-1601 *et seq.*

DOCKET NO. E-01933A-97-0772

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

DOCKET NO. RE-00000C-94-0165

**CITIZENS UTILITIES COMPANY
COMMENTS ON SETTLEMENT
PROCEDURE**

On November 5, 1998, the Utilities Division Staff ("Staff") of the Arizona Corporation Commission filed two Requests for Procedural Orders: one concerning a Proposed Agreement with Arizona Public Service Company ("APS") and the other concerning a Proposed Agreement with Tucson Electric Power Company (TEP"). Among other things, Staff requested that a hearing be held on November 20, 1998, with testimony or comments by parties other than Staff, APS, or TEP due by November 17, 1998. In a November 6, 1998, Procedural Order, Chief Hearing Officer Jerry L. Rudibaugh granted intervenor status to all parties in the above-captioned dockets in a new consolidated docket and gave intervenors until 12:00 noon on November 10, 1998, to file comments on Staff's proposed schedule. Citizens Utilities Company ("Citizens") hereby submits its comments.

1 The Staff schedule would deny intervenors their due process and equal
2 protection rights under the U.S. and Arizona Constitutions. The two Proposed
3 Agreements directly violate the June 22, 1998, Opinion and Order in Docket No.
4 RE-00000C-94-165 ("Stranded Cost Order"). The Stranded Cost Order is
5 supported by massive evidentiary underpinnings. As Mr. Rudibaugh well knows
6 (having presided over the docket), the Stranded Cost Order was only issued after
7 the following events:

- 8 1. December 6, 1997, Prehearing Conference;
- 9 2. Prefiled testimony;
- 10 3. Prefiled reply testimony;
- 11 4. Prefiled rebuttal testimony;
- 12 5. Two weeks of live testimony by and cross-examination of
13 approximately 40 witnesses;
- 14 6. Extensive briefs;
- 15 7. Reply briefs;
- 16 8. Mr. Rudibaugh's Recommended Order;
- 17 9. Additional public hearings in Phoenix, Flagstaff, and Tucson;
18 and
- 19 10. Two days of contentious open meeting.

20 After this six-and-one-half month process, the Stranded Cost Order concluded
21 that an Affected Utility, such as APS or TEP, could only recover its unmitigated
22 stranded costs if it agreed to divest all generation assets.

23 Now, after four months of closed-door negotiations, Staff asks the
24 Commission to ignore all evidence and alter its opinion to allow APS, far and away
25 Arizona's largest Affected Utility to not only keep its generation assets but to
26 acquire additional generation assets from TEP. TEP, Arizona's next biggest
27 Affected Utility, would be allowed to keep some generation, gain a monopoly on
28 high-voltage, privately-owned, transmission and still be allowed to compete in the
29 generation market through its 50%-owned subsidiary, New Energy Ventures.

1 Each utility would be able to recover all its stranded costs.

2 Staff would also have the Commission gut the Commission's Competition
3 Rules (Emergency) adopted August 10, 1998, in Docket No. RE-0000C-94-0165,
4 and the proposed Permanent Competition Rules currently being considered by the
5 Commission ("Competition Rules"). This rulemaking has also been a lengthy,
6 contentious process. The initial version of the Competition Rules was adopted in
7 late 1996, following many months of discussion. Reconsideration of the
8 Competition Rules began again in April 1998. Over the last several months the
9 Commission Staff has issued a number of iterations of draft competition rules and
10 position statements concerning retail electric competition. In response, Citizens
11 has submitted written comments to the Commission on May 14, May 22, July 6,
12 July 22, August 3, 1998, and September 18, 1998.

13 The Proposed Agreements would eviscerate the Competition Rules on the
14 threshold of competition - scheduled to begin on January 1, 1998. APS would be
15 granted eight significant waivers from the rules and, amazingly, TEP over 20.
16 Again, the thrust of the waivers appears to be to thwart competition and to
17 protect the incumbent utilities.

18 Although Staff is asking the Commission to both reverse its Stranded Cost
19 Order and gut its Competition Rules, remarkably, neither Staff, nor APS, nor TEP
20 would be required to even file any supporting testimony. But intervenors would
21 be required to file their testimony on November 17 - one week from today -
22 without benefit of meaningful direct testimony, discovery, or cross-examination.
23 Finally, Staff asks for a hearing on November 20 to bless this back-room bargain.

24 No new evidence has been offered to suggest that the Commission depart
25 from the positions taken in the Stranded Cost Order or in the Competitive Rules.
26 Nor could Citizens or any other party provide meaningful input in the time that
27 Staff would allot to prepare and file testimony. The resulting proceedings would
28 be a sham of the highest order, barely even giving lip service to the intervenors'

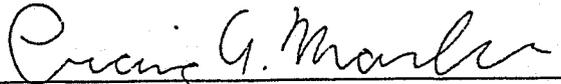
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1 constitutional rights and the Commission's obligation to issue orders that are
2 reasonably supported by the evidence and that are neither arbitrary nor
3 capricious.

4 Further, the overall proceeding would fundamentally discriminate against
5 Citizens and the Electric Cooperatives. The Stranded Cost Order and the
6 Competitive Rules applied to all Affected Utilities. The Staff would instead create
7 one set of new rules, born out of the light of day, that would apply to the two
8 giant Affected Utilities - APS and TEP. Only Citizens and the Coops would still be
9 subject to the Stranded Cost Order and the Competitive Rules. No showing has
10 been made, or even hinted at, that justifies such base discrimination.

11 If the Staff does want to change the rules, it must do so in a manner that
12 allows meaningful input from all interested parties, including customers,
13 competitors and other Affected Utilities. It must also allow time for briefing to
14 frame the issues and for a recommend order from the hearing officer to assist the
15 Commission in its final determination. Three months for the entire process would
16 be the bare minimum, given that Staff seeks to reverse the results of a six-and-
17 one-half month evidentiary proceeding and rewrite a rulemaking, three years in
18 the making.

19 RESPECTFULLY SUBMITTED November 10, 1998.

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21
22 
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24 Craig A. Marks
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26 Citizens Utilities Company
27 2901 N. Central Avenue, Suite 1660
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1 Original and ten copies filed this
2 November 10, 1998, with:

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

7 Copies of the foregoing mailed/delivered
8 this November 10, 1998, to:

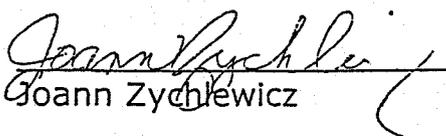
9 Jerry Rudibaugh
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007

13 Paul Bullis
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, Arizona 85007

17 Ray Williamson
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

21 All parties in Docket Nos. E-01933A-98-0471,
22 E-01933A-97-0772, and RE-00000C-94-0165.

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By: 
Joann Zychlewicz

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**SPECIAL
OPEN MEETING OF THE ARIZONA CORPORATION COMMISSION**

Date: Thursday, December 3, 1998
Time: 8:00 a.m.

Arizona Corporation Commission
Hearing Room
1200 West Washington Street
Phoenix, Arizona 85007

Date: Friday, December 4, 1998
Time: 8:00 a.m.

Arizona Corporation Commission
Hearing Room
1200 West Washington Street
Phoenix, Arizona 85007

Date: Saturday, December 5, 1998
Time: 8:00 a.m.

Arizona Corporation Commission
Hearing Room
1200 West Washington Street
Phoenix, Arizona 85007

Date: Monday, December 7, 1998
Time: 8:00 a.m.

Arizona Corporation Commission
Hearing Room
1200 West Washington Street
Phoenix, Arizona 85007

This shall serve as notice of a special meeting of the Arizona Corporation Commission at the above location for consideration, deliberation, and possible vote of the items on the following agenda and other matters related thereto. Please be advised that the Commissioners may use this open meeting to ask questions about the matters on the agenda; therefore, the parties to the matters to be discussed or their legal representatives are requested, though not required, to attend. The Commissioners may move to executive session for the purpose of legal advice pursuant to A.R.S. §§ 38-431.03.a.3. and/or 4. on the matters noticed herein.

The Arizona Corporation Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format, by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number (602) 542-0838, E-mail csandoval@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodations.

JACK ROSE
Executive Secretary

A G E N D A

Hearing on Proposed Settlement Agreements with
Arizona Public Service Company and Tucson Electric Power Company.

Docket No. E-01345A-98-0473
Docket No. E-01933A-98-0471
Docket No. RE-00000C-94-0165

Docket No. E-01345A-97-0773
Docket No. E-01933A-97-0772

14

September 18, 1998

RECEIVED



Mr. Paul A. Bullis
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

SEP 18 1998
LEGAL DIV
ARIZ. CORPORATION COMMISSION

Subject: Qualifications to Provide Transmission Consulting Services

Dear Paul:

We have assembled a summary of our background, qualifications and experience to proceed with the analyses discussed during our phone call today, and in your confidential transmittal of 9/17/98. As we indicated, Riley Rhorer, Todd Filsinger and Ted Myers, all of whom are registered professional engineers, will be the principal consultants directing the work effort. Two additional staff members whose expertise we expect to draw on as needed are Kenneth Bagley, and Jennifer Tripp, both of whom are also located here in Phoenix. The resumes and experience of all five of us are summarized on the attached materials.

Given the time constraints you are under, and considering the scope of work you have indicated, we estimate that we will need to utilize the equivalent of three senior consultants and one support person over the next two weeks to complete this assignment, given our current understanding of your needs. We do not anticipate that total billing would exceed \$50,000 during this two-week period, and in any event we will not exceed that amount without prior authorization from you.

References from three regional clients that we have worked with recently on transmission, valuation, and electric deregulation-related issues are shown on the first attached page. Finally, we have attached an example of testimony Riley Rhorer submitted to FERC two years ago on behalf of NTUA. This testimony may be interesting to you as it deals with the "market power" issue we discussed earlier today.

We appreciate the opportunity to assist you with these analyses, and we look forward to working with you and your staff if we are selected.

Sincerely,

R. W. BECK, INC.

A handwritten signature in cursive script, appearing to read 'Ted L. Myers', written in dark ink.

Ted L. Myers
Senior Director

TLM:jk
Attachments

02-00506-01000-1000 | c:\bd_tlm\acc\accvllt.doc

Anchor Centre One, Suite 115B, 2201 East Camelback Road Phoenix
Phone (602) 957-2888 Fax (602) 957-1808

Attachment 14

15

To: File

From: **PAB**
W. A. Bullis
Chief Counsel
Legal Division

Date: September 23, 1998

RE: R.W. Beck Consulting Contract

In very early September, Tucson Electric Power Company ("TEP") began discussing with Staff the concept of TEP's acquiring transmission assets of other Arizona electric utilities. Those assets would be owned by a subsidiary of TEP and operated by an Independent System Operator.

Reviewing this proposal for consideration of whether and under what circumstances it would be in the public interest requires significant engineering, transmission, economic and financial expertise. In addition, it is necessary to mobilize that expertise immediately so that the proposal can be evaluated and, if in the public interest, implemented in a time frame so as to allow electric competition to begin on January 1, 1999. This will require the evaluation, conclusions, recommendations and possible implementation to be completed well before the end of 1998.

The Commission lacks the capability to conduct the necessary evaluation in the required time frame. It therefore became imperative to seek the services of an outside consultant.

Given the exceptionally tight time frame within which the proposal must be considered, it was impossible to prepare and distribute a complete Request for Proposal. Instead, a Scope of Work was prepared and provided to several potential consulting firms that were identified on the basis of recommendation, reputation, and relevant expertise. A list of the potential consulting firms that were contacted is attached.

Three of the firms responded verbally to the Scope of Work, expressing varying levels of interest. A conflict was identified with one of the firms, and no further discussions were held. Staff conducted discussions with the two remaining firms.

Staff considered the results of the discussions, which included discussions of cost, conflicts, expertise, experience and mobilization. R.W. Beck was selected on the basis of all of these considerations. R.W. Beck has no direct conflicts (in contrast to the other firm), proposed performing the work within the suggested budget, is able to mobilize immediately, and has relevant experience. In addition, R.W. Beck has knowledge and experience with the Arizona transmission system.

The process utilized to acquire a consultant was severely constrained by the extremely tight time frame within which the work must be completed. Nevertheless, we were able to identify several interested firms. Among those firms, R.W. Beck not only was uniquely qualified on the basis of Arizona specific experience, it was best able to mobilize immediately and fit within the proposed budget. In addition, R.W. Beck was the only firm without a direct conflict.

POTENTIAL TRANSCO CONSULTANTS

The following potential contractors were contacted:

Tony Fakonas
Hagler Bailly
455 Market Street, Suite 1420
San Francisco, California 94105-2442
Phone: 415-882-1602 x. 600
FAX: 415-882-1610
Haba.com

Ted Myers
R.W. Beck
Anchor Centre One
Suite 115B
2201 East Camelback Road
Phoenix, Arizona 85016-3433
Phone: 957-2888
FAX: 957-1808
Phoenix@rwbeck.com

Lynton Kotzin
Pricewaterhouse Coopers
2901 North Central Avenue
Suite 1000
Phoenix, Arizona 85012
Phone: 280 1800
FAX: 280-1999
<http://www.pwcglobal.com/>

Steve Stenson
Black & Veitsch
325 East Elliot Road
Suite 27
Chandler, Arizona 85225
Phone: 632-4300
FAX: 632-8577
Bv.com

Scope of Work

1. Analyze, evaluate and make recommendations regarding the proposal ("TRANSCO proposal") for a subsidiary of Tucson Electric Power Company to purchase the transmission assets of Arizona electric utilities.
2. Evaluate the potential impact of the TRANSCO proposal on transmission rates.
3. Evaluate and make recommendations regarding the value of transmission and transmission-related assets to be acquired pursuant to the TRANSCO proposal.
4. In coordination with Commission Staff and other consultants utilized by Commission Staff, evaluate the reasonableness of the valuation placed on generation, generation-related, and any other assets exchanged, transferred or otherwise acquired pursuant to the TRANSCO proposal.
5. Identify, analyze and make recommendations concerning tax consequences to the entities involved in the TRANSCO proposal.
6. Identify, analyze and make recommendations concerning effects of the TRANSCO proposal on tariffs for both standard offer customers and customers taking competitive services.
7. Analyze and evaluate any market power issues associated with the TRANSCO proposal, including but not limited to engineering and economic analysis.
8. Analyze and evaluate any transmission constraint issues associated the TRANSCO proposal.
9. Analyze and evaluate any reliability issues associated the TRANSCO proposal, both as to generation and transmission.
10. Make specific recommendations that address any market power or transmission constraint issues identified.
11. Analyze, evaluate and make recommendations regarding the implications of the TRANSCO proposal for the development of an ISO, ISA, and Desert Star.
12. Analyze, evaluate and make recommendations concerning all filings and proceedings before any other forum concerning regulatory approvals necessary to implement the TRANSCO proposal.
13. Analyze, evaluate and make recommendations concerning the effect of the TRANSCO proposal on the stranded costs of the parties to the proposal.
14. Analyze, evaluate and make recommendations regarding the implications for the TRANSCO proposal of a failed auction of Tucson Electric Power's generation assets.
15. Prepare and conduct discovery for purposes of these tasks and any hearings or proceedings before the Commission related to these tasks.
16. Prepare written reports and testimony to support the analyses, evaluations and recommendations required in these tasks.
17. Provide testimony at hearings and proceedings before the Commission related to these tasks.
18. Provide cross-examination questions for any hearings or proceedings before the Commission related to these tasks.
19. Provide responses to discovery provided by other parties related to these proceedings.
20. Evaluate testimony, comments, briefs and other filings made by other parties to these proceedings.

21. Provide support for and participation in any settlement negotiations with parties related to these proceedings.
22. Assist in the negotiation and preparation of settlement documents related to these proceedings.
23. Provide monthly reports throughout all phase of work as to the Contractor's progress related to these tasks.

16

1 I just, I don't want to be on record
2 suggesting that process is iterative. It requires
3 what it requires. But you'd agree that it's unlikely
4 that we'll get -- I can't name a single state who's
5 done this perfectly and right and that has a
6 competitive market, and yet more and more states are
7 doing it, and nobody is backtracking. The public
8 hasn't reversed it from two fronts that they've had to
9 do this. Sometimes you have to actually launch a
10 policy effort and you start slipping deadlines, and
11 there's no consequence at all, just slipping
12 deadlines, it still has -- it slips six months, a
13 year, two years, new Commissioners are going to have
14 to get up to speed, unless they take somebody's word
15 for something quickly. I don't know that that's
16 necessarily an ideal, either.

17 No matter how we do this, there's some risks
18 that it may not be done perfectly, and that there will
19 have to be corrections along the way.

20 MR. LYNCH: Your statement, to the extent
21 there's a question mark in there --

22 COM. JENNINGS: Sure, in sort of the long
23 way.

24 MR. LYNCH: -- assumes facts not in evidence.
25 It assumes that you can't go forward with competition.

1 under your rules without this asset swap, and that's
2 not true, in my view.

3 I don't see the mandatory connection. I see
4 the desirability of it as reflected in the stock
5 market, but in some people's views, but I do not see
6 the necessity.

7 What we're talking about, very simply, other
8 than market power issues that are involved, both
9 horizontal and vertical in doing this, is getting a
10 guarantee of recovery of stranded cost, avoiding the
11 whole process, not having to prove that you've
12 mitigated anything, by coming up with a formula that
13 substitutes for examining company conduct on what
14 they're doing, and says we're just going to use a
15 formula to take the place of everything else that's in
16 the rules.

17 Maybe I'm reading this wrong, but that's what
18 I read in this thing. And it's all about stranded
19 cost. We've injected market power issues into this
20 for the first time really because you're changing the
21 nature of the companies and the asset swap, which is
22 much different than just looking at them as integrated
23 utilities and saying are you going to have stranded
24 costs, what can you prove, what are you mitigating,
25 how are we going to finish this in our new zone when

17

1 from the outset, certainly, as you well know, I did
2 issue a P.O. this morning setting a hearing. It did
3 go out this morning setting it for December 7th. But
4 recognizing this was being heard today, it's simply a
5 matter I believed I needed to get something out there,
6 and so that's what has been done.

7 I will also note for you that there is a
8 special open meeting tomorrow, which I'll ask Staff,
9 do you know why that is set as far as reconsideration
10 for procedural schedule in this matter?

11 MR. BULLIS: That's correct, Your Honor. The
12 Staff continues to believe that the procedural dates
13 that requested modification for procedural order, in
14 particular the requested hearing date of December 2nd,
15 is an appropriate date and ought to be established for
16 this proceeding. And my understanding, the special
17 open meeting tomorrow it will allow the Commissioners
18 to consider that date or any other date that they may
19 wish to utilize as a hearing date in this matter.

20 HEARING OFFICER RUDIBAUGH: Is it also
21 Staff's understanding that it's desired by this
22 Commission to have a completed order by December 10th?

23 MR. BULLIS: Your Honor, it is my desire to
24 have a completed order by December 10th, yes.

25 COM. KUNASEK: Mr. Hearing Officer, if I

1 could, Mr. Bullis, could you explain to me why my
2 office was not consulted for the availability of my
3 calendar for this meeting tomorrow?

4 MR. BULLIS: Mr. Commissioner, I was not
5 involved in contacting Commissioners' offices. I
6 don't know who was consulted or who was not consulted.

7 My understanding is that the -- once the open
8 meeting, special open meeting was scheduled, that
9 notification went to the Commissioner's office at the
10 same time, but I was not involved in that.

11 COM. KUNASEK: Do you know what time that
12 was?

13 MR. BULLIS: Mr. Commissioner, I don't.

14 COM. KUNASEK: Approximately 6:30 last
15 evening. Ordinarily how many Commissioners are in
16 their office at that time?

17 MR. BULLIS: I couldn't answer that, I don't
18 know.

19 COM. KUNASEK: Thank you.

20 HEARING OFFICER RUDIBAUGH: Attorney General,
21 please go ahead.

22 COM. KUNASEK: Perhaps the Chairman of the
23 Commission would be able to prepare himself for
24 answering that question. You don't have to answer
25 now.

1 HEARING OFFICER RUDIBAUGH: Please go on.

2 MS. DALLIMORE: Sir, do I understand as of
3 this moment the schedule is that our testimony is due
4 on the 30th, that rebuttal testimony is due on the
5 4th, and that the hearing will commence on the 7th of
6 December?

7 HEARING OFFICER RUDIBAUGH: As of right now,
8 the original date I had provided to you folks is still
9 there, the 30th at 4:00. The procedural order
10 indicates Staff, APS and TEP would file their
11 responses by noon on December 3rd, prehearing
12 conference at 1:00 on December 4th, a hearing to
13 commence on December 7th at 10:00.

14 MS. DALLIMORE: Did I just hear that the
15 contemplation is this hearing will be over by December
16 10th?

17 HEARING OFFICER RUDIBAUGH: Yes, ma'am.

18 MS. DALLIMORE: Well, then, allow me to
19 address my remarks to this new schedule, if I may.

20 HEARING OFFICER RUDIBAUGH: Well, so you
21 understand, your motion is still on the table, nothing
22 has been approved or denied. Although that's, as I
23 tried to indicate with you, although the procedural
24 order went out, I still consider this as being open.

25 MS. DALLIMORE: I appreciate that very much.

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BEFORE THE ARIZONA CORPORATION COMMISSION

SPECIAL OPEN MEETING) WORKING SESSION
) and
) DELIBERATIONS
)

At: Phoenix, Arizona
Date: November 25, 1998
Filed: NOV 30 1998

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1103

By: CECELIA BROOKMAN, RPR

Prepared for:

ACC

ORIGINAL COPY

		AGENDA	
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5	U-2	Navajo Communications Company (T-02115-97-0041)	9
6	U-3	Citizens Utilities Company Mohave County (T-01032-97-0042)	9
7	U-4	Citizens Communications of the White Mountains (T-03213-97-0043)	9
8	U-5	Arizona Public Service Company (E-01345A-97-0773)	21
9	U-6	Arizona Public Service Company (E-01345A-98-0473)	21
10	U-7	Tucson Electric Power Company (E-01933A-97-0772)	21
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12	U-9	In the matter of the Competition in the Provision of Electric Services (RE-00000C-94-165)	50
13	U-10	Sun City Water Company (W-01656A-98-0577)	55
14	U-11	Sun City West Utilities Company (SW-02334A-98-0577)	55
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1 BE IT REMEMBERED that the Open Meeting was
 2 held on November 25, 1998, commencing at 9:20 a.m.
 3 before the Arizona Corporation Commission, in Hearing
 4 Room 1 of said Commission, 1200 West Washington
 5 Street, Phoenix, Arizona.

6
 7 BEFORE: JIM IRVIN, Chairman
 8 RENZ D. JENNINGS, Commissioner

9 APPEARANCES:

10 FOR THE ARIZONA CORPORATION COMMISSION:

- 11 Jack Rose
- 12 Ray Williamson
- 13 Jerry Rudibaugh
- 14 Janice Alward
- 15 Paul Bullis
- 16 David Motycka

17 FOR RUCO:

- 18 Scott Wakefield

19 FOR U S WEST COMMUNICATIONS, INC.:

- 20 TIMOTHY BERG

21 FOR CITIZENS UTILITIES:

- 22 Craig Marks

23 FOR ASARCO, CYPRUS MINERALS, AND ARIZONANS FOR
 24 ELECTRIC CHOICE:

- 25 C. Webb Crockett

1 APEARANCES:

2

FOR ARIZONA TRANSMISSION INDEPENDENT UTILITY
3 GROUP, CONSUMER OWNED ELECTRIC SYSTEMS AND
MSR:

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Bob Lynch

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CECELIA BROOKMAN
Court Reporter

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1 CHMN. IRVIN: If I could have your attention,
2 please. We'll, in a moment, proceed and get the
3 meeting called to order.

4 Before I call this meeting to order, however,
5 I would like to take a brief moment to express my
6 sincere regret, as well as my sincere congratulations
7 to not only a friend, but probably one of the finest
8 individuals we've had working at this Commission as a
9 director in my short tenure with this Commission, and
10 as the Director of our Securities Division who is
11 seeking the higher grounds of the private sector life
12 and will be leaving us at the end of this week. That
13 is Mr. Michael Burton, who has done truly an
14 outstanding job in raising levels of our Securities
15 Division and in enforcing the strict laws that the
16 consumers require protection in this state, in the
17 securities deals, as well as being innovative and
18 creative in helping further the mission of this
19 Commission to help capital markets, help businesses
20 create and generate revenues and create, help generate
21 Arizona with a strong economy that we have certainly
22 enjoyed.

23 Mike, you will be sorely missed. He has done
24 a truly outstanding job, and both as a personal friend
25 and as a professional, I wish you absolutely the very,

1 very best. Mr. Burton is standing in the back there,
2 with some of his staff members, and I know they will
3 miss him as well. And Mike, God speed and good luck
4 to you. May the Irish lose, however, on Saturday, but
5 other than that, you have very few flaws.

6 COM. JENNINGS: Mr. Chairman, if I could make
7 a quick add-on comment here.

8 You've been rock solid and made our division
9 shine and calmed the waters, and you had a deep keel
10 in the water, being purposeful, and everyone respects
11 you, and you leave with your head held high, and go on
12 to a new life and we appreciate what you did for us.
13 Thanks.

14 MR. BURTON: Thank you.

15 CHMN. IRVIN: Mike, if you have anything
16 you'd like to say, please feel free.

17 MR. BURTON: Kill off the rest of the opening
18 meeting.

19 CHMN. IRVIN: I'm trying to delay one more
20 comment.

21 MR. BURTON: Just, I would like to again
22 express my thanks to the Commissioners for their
23 support and their guidance and leadership. Jack Rose,
24 Stephen Ahearn, Stu Brackney, who I neglected to thank
25 yesterday, my friends in the Hearing Division, Jerry

8

1 Rudibaugh, Lyn Farmer, Marc Stern, Barbara, everybody,
 2 Teena, Legal Division, and of course, the people in
 3 Securities Division who really made my job very easy.
 4 And you do a terrific job every day, and in
 5 particular, our support staff who never gets nearly
 6 enough praise, Emie Bridges, who's had to spend 18
 7 months keeping track of me constantly, in the course
 8 of the job, Victor, Ray and the rest of them Matt
 9 Sherwin, Brian, thanks to you all.

10 CHMN. IRVIN: Again, thank you. And on
 11 behalf of the Commission, of the Staff, thank you for
 12 a job well done. We'll look forward to seeing you in
 13 the future, my friend.

14 Let us now go on the record and we'll open
 15 this special meeting called for today scheduled on the
 16 25th of November, 9:15, to order.

17 We have several items of housekeeping that
 18 this Commission has decided they'd like to take a look
 19 at and see if we can get cleaned up prior to the end
 20 of this year, so that a new Commission, when it comes
 21 on board with Commissioner West, will have a clean
 22 slate and we will start once again anew as I think was
 23 afforded me that same privilege by the Commission
 24 prior to me coming on board.

25 So without any further ado, do you have

1 anything you wanted to say, Commissioner?

2 COM. JENNINGS: No.

3 CHMN. IRVIN: With that, let me ask the
4 Executive Secretary, since you've basically drafted
5 this, do you want to handle these individually, you
6 want to handle them collectively, what is your
7 preference on how you would like to have Staff address
8 these?

9 MR. ROSE: I would like to bunch them. 1
10 through 4, 5 through 8, 9, then 10 and 11.

11 CHMN. IRVIN: That's U S WEST, Navajo,
12 Citizens, and Citizens, then Arizona Public Service,
13 TEP, 5, 6, 7, and 8. 9 is a separate issue, as I
14 understand it, then 10 and 11 combined; correct?

15 MR. ROSE: That's correct.

16 CHMN. IRVIN: Commissioner Jennings, do you
17 have any objection to that schedule?

18 COM. JENNINGS: None.

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1 AGENDA ITEMS NOS. U-1 THROUGH U-4

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CHMN. IRVIN: Hearing no objection, we'll go ahead and proceed. We'll handle Items 1, 2, 3, and 4, which is U S WEST, Navajo Communications, Citizens, Mohave County, and Citizens of the White Mountains.

Mr. Rose.

MR. ROSE: Thank you, Mr. Chairman.

The purpose of the meeting today, as you know, is to set procedural schedules for the Commission for calendar year 1998 to complete some items that the Commission has charged Staff to bring back by the end of the year.

The first four items have to do with PAL tariffs. On November 16th, a procedural order was issued setting up a hearing date of November 30th. On November 23rd, Staff filed a motion to continue for two weeks due to some difficulties in preparing Staff testimony as a result of our consultant not being available. U S WEST filed a motion yesterday to continue.

We are recommending that the hearing date and all procedural dates be delayed for three weeks to commence on December 21st, 1998, and we have a proposed procedural order which you should have, which

1 sets forth those dates and would recommend approval of
2 the procedural order.

3 CHMN. IRVIN: Give me those dates again. The
4 Staff is recommending those orders be when?

5 MR. ROSE: The dates be slipped by three
6 weeks, and that the hearing should commence on
7 December 21st, 1998.

8 CHMN. IRVIN: How long is it anticipated that
9 hearing will take place?

10 MR. ROSE: We believe it will be
11 approximately two to three days, at most.

12 COM. JENNINGS: Right after Christmas Eve?

13 MR. ROSE: Yes.

14 CHMN. IRVIN: Sounds appropriate.

15 COM. JENNINGS: No coasting on my way out.

16 CHMN. IRVIN: No objection from Staff;
17 Hearing, I trust, can handle it.

18 Staff, does it meet that time frame for that
19 item? This has been an item that has been dragging on
20 for quite some time; it's like it's a new item.

21 MR. ROSE: Since February of '97, I believe.

22 CHMN. IRVIN: Commissioner.

23 COM. JENNINGS: Hearing.

24 HEARING OFFICER RUDIBAUGH: Mr. Chairman,
25 Commissioner Jennings, yes, we certainly can handle

1 it. We don't understand, quite frankly, why there's a
2 need to even have it on here to continue it when
3 that's something we would normally handle in the
4 normal course of business. And certainly by
5 telephone, yesterday, we already have vacated the date
6 for filing based on a conference call with the pay
7 phone folks and U S WEST.

8 If it is, in fact, the intent to have a
9 hearing on December 21st and have this on the open
10 meeting on December 10th, I'm not clear how that can
11 transpire.

12 CHMN. IRVIN: What is December 10th?

13 MR. ROSE: We had originally requested that
14 this item be placed on the agenda for December 10th.
15 However, slipping these dates, we would anticipate a
16 Commission vote at the conclusion of the December 21st
17 hearings.

18 CHMN. IRVIN: Or another special meeting.

19 MR. ROSE: Or another special meeting prior
20 to the end of the year, which we will have to have one
21 towards the end of the year, regardless.

22 CHMN. IRVIN: So much for your Christmas
23 two-week vacation.

24 COM. JENNINGS: Well, I'd like to, I guess,
25 respond to the Chief Hearing Officer's comments.

1 I am not normally a fan of piecemeal
2 regulation. I like most events to take place in the
3 context of a rate proceeding, and particularly, I've
4 been calling for one for U S WEST for a long, long
5 time, and this is just delayed and delayed and
6 delayed. And I think that there is a patent
7 unfairness to the delay for the coin operated phone
8 industry.

9 It's a national intent, and therefore our
10 intent, to have competition in pay phones, and there's
11 an unfair windfall. I don't know what the numbers
12 ought to be, but I'm happy enough to decide any of
13 these issues that have been lingering around for a
14 long time and I've wondered why the delay. So I'm
15 happy enough to decide these issues before I go,
16 except other than it ruins Christmas, perhaps.

17 HEARING OFFICER RUDIBAUGH: Mr. Chairman,
18 Commissioner. Since most of the delay, quite frankly,
19 has been as a result of requested discovery by the pay
20 phone folks, in addition, if you note, Staff,
21 throughout has indicated they concur completely with
22 U S WEST, that their existing rates are -- meet all
23 applicable laws and should not be revised, it was only
24 within the last month that Staff has completely
25 changed their recommendation 180 degrees. But again,

14
1 it is my understanding that U S WEST and the pay phone
2 folks were satisfied with the progress as far as the
3 scheduling.

4 In addition, I'll note that under our
5 procedural order, we've indicated, if in fact it's
6 determined after a hearing that the rates should have
7 been lowered, that those rates, any refund would
8 include interest at the legal going rate.

9 COM. JENNINGS: Mr. Chairman, Chief Hearing
10 Officer, I of course don't know the machinations or
11 whatever has gone on before, and who's got what
12 interest and how this should be decided, other than
13 this has been going on for a long, long time and it
14 seems like a fair thing to me to resolve it, and I
15 don't mind doing it. And I don't care, any particular
16 brief for any party.

17 You know, on the one hand, lucrative pay
18 phones make a contribution to U S WEST and Citizens
19 Utilities that helps keep their rates affordable. And
20 on the other hand, those rates look way more than
21 compensatory, and so I'm happy to listen to the
22 merits, and try to make a decision based on substance,
23 policy, and due process.

24 CHMN. IRVIN: Anything further Staff would
25 like to add to that? I have nothing to add to it..

1 MR. ROSE: No.

2 CHMN. IRVIN: I trust the parties have no
3 objections to this, or do have an objection.

4 MR. ROSE: Please understand, Mr. Chairman,
5 we do have copies of the procedural order down here,
6 if people would like them.

7 CHMN. IRVIN: Mr. Berg.

8 MR. BERG: Thank you. Timothy Berg of
9 Fennemore Craig on behalf of U S WEST.

10 Let me start by saying that we appreciate
11 Staff's willingness to move their proposed hearing
12 date from December 14 to December 21st to accommodate
13 the availability of one of our witnesses who had
14 already been committed to hearings in Wyoming and
15 Nebraska the week of December 14th.

16 Having said that, it is still our position
17 that the original procedural schedule in this matter,
18 which provided for the filing of testimony by us in
19 December, response by the pay phone association in
20 January, and a hearing in February at which, if our
21 rates were found to be excessive, the pay phone folks
22 would be entitled to a refund with interest back to
23 April of 1996, was the appropriate procedural
24 schedule, and to have Staff change its basic position
25 in this case after almost two years of litigation, to

16
1 have them, earlier this week, decide they were going
2 to go out and seek an outside witness whose identity
3 we have not been informed of, to have them originally
4 propose that we get that witness' testimony one
5 business day before the hearing, and now I think more
6 reasonably suggest we get it 10 days before the
7 hearing, still raises serious due process concerns in
8 our mind. Because we're going to get this testimony,
9 according to procedural order we will have some time
10 to look at it, which is a significant improvement over
11 I think what was proposed yesterday, but we don't have
12 time to do discovery, we don't have time to undertake
13 the kind of analysis we need. And I think the haste
14 to complete this matter results in a significant
15 violation of the rights of U S WEST, and frankly of
16 Citizens, also, although I'm not speaking for them.

17 In addition, there are significant legal
18 issues here about whether this is appropriate under
19 the Scates case, and I think that, while again we
20 appreciate the Staff's attempting to accommodate our
21 witness' availability, and this is an improvement over
22 where we were yesterday, the appropriate schedule for
23 this matter is the one that was set by the Hearing
24 Division originally, which is to give the parties time
25 to do a first class job on this, to give you the kind

1 of information you need to make the decision you've
2 been talking about, Commissioner Jennings. And that
3 would have been with a hearing in February, with full
4 discovery, with an opportunity to undertake the sort
5 of analysis that's needed.

6 And for that reason, U S WEST continues to
7 protest both the original order which would have set
8 the hearing for Monday, and this new order which
9 continues it for three weeks.

10 Thank you very much.

11 CHMN. IRVIN: Mr. Berg, just one question.
12 You say that the due process has been done. This case
13 has been going on for two fricken years and it's time
14 we bring it to a resolution. And I'm sorry, but I'm
15 extremely frustrated with this thing, and this thing
16 should have been resolved. And quite frankly, all
17 parties are guilty of foot dragging on this thing, and
18 the Commission has a responsibility to the people to
19 resolve these issues, and I think that's what we're
20 looking at here. And to have a case lingering on...

21 In fact, I can recall the most recent
22 political campaign where this Commission was chastised
23 supposedly for dragging things on with another
24 utility. And certainly, it is in the best interests
25 of this Commission to clear up as many of those

1 matters as possible before the new Commissioner gets
2 on so that those campaign promises he made are
3 certainly met and he gets to start with a clean slate.
4 And I'm extremely frustrated that this has taken so
5 long, two years, for this particular -- this is one
6 issue I know is just insane, and so it's time the
7 Commission moved it along.

8 I appreciate your comments, but that's where
9 I come from, and to sit there and try to say that all
10 of a sudden we're coming to a rush to judgment now, I
11 quite frankly disagree. Had the utilities been
12 responsive to the Commission request, each other's
13 request in a timely fashion, we wouldn't be here
14 today. This thing should have been resolved six
15 months ago.

16 MR. BERG: Commissioner, I don't disagree
17 with you, as a general proposition a tariff filing
18 shouldn't take two years to get resolved. I think
19 that is clearly true.

20 I think what has happened here is this thing
21 has rocked along sort of on its own course, and what
22 happened is when it became clear we needed to have a
23 hearing, the Hearing Division set a reasonable
24 schedule and gave everybody a fair chance to present
25 their position. That doesn't excuse the months of.

1 delay before that, and I'm not going to try to blame
2 any individual party. If the Commission chooses to
3 blame all parties, I think that's fine.

4 I think the answer is, though, when you
5 decide you have to have a hearing and you need to
6 resolve something on the merits, the hearing process
7 has to be such to give people a fair chance to present
8 a reasoned basis for you to make that decision, and I
9 think that the original procedural order did that, and
10 that was the point I was trying to make.

11 Thank you.

12 CHMN. IRVIN: Thank you.

13 COM. JENNINGS: May I? Let me just part
14 company a little bit with the Chairman. I don't care
15 what some candidate for office campaigning promises
16 are, or even whether he honors them. What I care
17 about is making good and fair decisions, and it seems
18 to me just intuitively, and I could be wrong, I mean
19 not deciding this issue until I've heard the issue,
20 but it looks like that the dominant phone companies
21 are pricing the links to the competitors way above the
22 compensatory rate. I think it's unfair, and it's been
23 unfair, I don't know what the right number ought to
24 be, and that's what we have hearings for.

25 And frankly, this is one -- I mean, I have no

1 doubt that the next Commission could get this right as
2 well. It's gone on a long time, and we should decide
3 things that linger too long, is my judgment.

4 CHMN. IRVIN: Thank you.

5 MR. MARKS: If I might, Craig Marks on behalf
6 of the Citizens Utilities companies.

7 I don't see any purpose in beating a dead
8 horse in this, so I would just echo the comments that
9 Mr. Berg made, and Citizens will join in those. And I
10 do understand your Commission's position and that the
11 parties do want to get this matter resolved, and
12 certainly the new schedule is a big improvement over
13 what had been proposed before and one we had not
14 even -- I know it was inadvertent, but had not been
15 provided a copy of the schedule before, so we will be
16 a willing participant.

17 Thank you.

18 CHMN. IRVIN: Thank you.

19 Anything else Staff wants to add to that?

20 MR. ROSE: No, Mr. Chairman.

21 CHMN. IRVIN: Would you care to vote on it?

22 COM. JENNINGS: Sure.

23 CHMN. IRVIN: I'll go ahead and move the
24 items, Items one, two, three and four, for a vote.

25 MR. ROSE: It's one procedural order,

1 Mr. Chairman.

2 CHMN. IRVIN: You've got one procedural order
3 for those specific items. I'll go ahead and move that
4 procedural order. Any further discussion.

5 (No response.)

6 CHMN. IRVIN: Call for a vote.

7 MR. AHEARN: Commissioner Jennings.

8 COM. JENNINGS: Aye.

9 MR. AHEARN: Commissioner Irvin.

10 CHMN. IRVIN: In favor. By a vote of two
11 ayes, one absence, the procedural order will be
12 adopted.

13 Thank you.

14 (End of Items U-1 through U-4.)

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1 AGENDA ITEMS NOS. U-5 THROUGH U-8

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3 CHMN. IRVIN: The next item will be Items 5,
4 6, 7, and 8, which is the Arizona Public Service
5 Company's on Item 5 and 6, Tucson Electric Power
6 Company, the approval of plan for the stranded cost
7 recovery and the consideration of the unbundled
8 tariffs pursuant to Rule 14-2-1601.

9 Who's going to handle it?

10 MR. ROSE: I will, Mr. Chairman.

11 The Commission has charged Staff with the
12 responsibility of bringing electric competition,
13 retail electric competition items, these items to the
14 Commission so that it can commence on January the 1st.
15 We believe that you, the Commission, should have the
16 opportunity to hear the settlement, the APS, TEP
17 settlement on the merits, and then decide if it's in
18 the public interest.

19 While of course we're concerned with due
20 process issues, we believe that four and a half years,
21 we had literally hundreds of hearings and working
22 group meetings, have put together a body of evidence
23 in support of Staff's position, and we believe the
24 initial Staff recommendation, with hearings that
25 commencing on December 3rd, are appropriate, and we

1 have prepared a recommended procedural order which
2 would begin to commence hearings on December 3rd,
3 1998.

4 We're also doing this to try to accommodate
5 some of the Commissioners' schedules. If you were to
6 begin on December 7th, as recommended by the Hearing
7 Division, it would not be possible to do travel plans
8 to complete those hearings on a timely basis. So
9 Staff would recommend a procedural order that you have
10 in front of you.

11 CHMN. IRVIN: What were the new dates of
12 that?

13 MR. ROSE: That would be December --
14 beginning December 3rd, Mr. Chairman, 8:00 a.m. And
15 this has been the Staff position from the -- I don't
16 know when we filed this, but it's been just a couple
17 of weeks.

18 CHMN. IRVIN: We heard quite a bit of
19 testimony yesterday and a hearing on 41-1061. Would
20 you care to address that, and how is this going to
21 apply to that?

22 MR. ROSE: Mr. Bullis will address that.

23 MR. BULLIS: Mr. Chairman, Commissioners, the
24 41-1061 reference that you made is a statutory
25 reference cited by the Attorney General in their

1 pleadings that were filed a couple days ago. That is
2 a citation to the Administrative Procedure Act, and
3 that indicates that except as otherwise provided by
4 law to contested matters, there shall be a 20-day
5 notice. Except as otherwise provided by law, includes
6 administrative rules, which have the force and effect
7 of law. The Commission's administrative rules say
8 that there shall be 10-day notice of hearings except
9 as otherwise ordered by the Commission.

10 So the Commission's rules are operative, in
11 this instance, under the terms of the Administrative
12 Procedures Act, under 41-1061, and the Commission's
13 rules allow the Commission to determine what is
14 appropriate notice for hearings. So the schedule is
15 set forth in the proposed procedural order and
16 comports with the law in terms of the requirements of
17 notice.

18 CHMN. IRVIN: The other concern was with
19 regards to the fact that the -- hearing the objections
20 from the Attorney General of which almost everybody --
21 that side of the room accepted and the people on the
22 other side of the room rejected. Their main concern
23 was that being able to have adequate time for rebuttal
24 and discovery. In your professional view, obviously,
25 they claim it's a problem so they view it as a

1 problem. What's Staff's comments on that?

2 MR. BULLIS: I might, Mr. Chairman, as we've
3 indicated, this process has gone on for some time.
4 You'll notice in the caption of this proceeding, you
5 reference the unbundled tariffs, you reference
6 stranded cost filings. All these things have been on
7 file well in advance of the specific settlement
8 agreement that is before you.

9 So there's been opportunity for ongoing
10 discovery for learning about the specific issues
11 during the course of years of proceedings.

12 In addition, procedural orders that have been
13 issued have specifically allowed for discovery, for
14 expedited discovery, in fact, that required Staff and
15 APS and Tucson Electric to provide discovery responses
16 within 24 hours. And speaking for Staff, we certainly
17 endeavored to do that. My understanding is that the
18 utilities have endeavored to do that as well.

19 There is going to be prefiled testimony that
20 all the parties will have a chance to look at and
21 evaluate. Staff and the utilities have done that
22 already where we've prefiled rebuttal testimony.
23 There will be an opportunity for cross-examination at
24 the hearing. There continues to be opportunity for
25 gathering more information. So we understand that

1 the -- it's always -- we're always frustrated by not
2 having enough time, but we believe that the parties
3 have been provided adequate opportunities for learning
4 about and understanding the proposal, and also we'll
5 have the opportunity for cross-examination, presenting
6 their own testimony at the hearing.

7 CHMN. IRVIN: If this were to be delayed as
8 per the request of the Attorney General in yesterday's
9 proceedings, let me refer to Mr. Williamson and
10 Mr. Rose to this question: What would be the net
11 effect, what do you believe competition -- you guys
12 have been working on this, extensively representing
13 the Commission, the net effect of competition?

14 MR. ROSE: Mr. Chairman, I do not believe
15 that we would be able to meet the January 1st
16 deadline, unless this procedural schedule is adopted.

17 CHMN. IRVIN: In case you're not aware,
18 Mr. Rose, but the Attorney General's proposal would
19 not meet it because the AG's office is requesting that
20 the meeting be delayed until sometime in late
21 February, with the beginning of competition obviously
22 March 1st, at the absolute earliest. That's her
23 proposal. Is there some sort of compromise on that or
24 not?

25 MR. ROSE: We don't believe so. If the

1 Commission remains committed as it has been for the
2 past three, four years to a January 1st, '99 deadline,
3 then we're going to have to move forward on this
4 schedule. I would just point out that while I agree
5 that these are extremely complex matters, delay is not
6 going to make them any easier or necessarily any
7 clearer. We could debate this issue for another four
8 years and still not get everyone agreed on a plan to
9 move forward.

10 And I would just ask Mr. Williamson for his
11 comments also.

12 MR. WILLIAMSON: Mr. Chairman, for the
13 record, I'm Ray Williamson, acting Director of the
14 Utilities Division.

15 Mr. Chairman, I think the basic answer is
16 that if we do not move forward and approve these
17 settlements by the end of the year, we may have
18 competition in name but not in fact on January 1st.

19 And here's what I mean by that. The
20 competitors and their customers are going to want to
21 know with certainty what the resolution of some of
22 these issues are going to be before the competitors,
23 number one, make an offer of service to the customers;
24 and number two, before the customers sign a contract.

25 To leave this in limbo until sometime next

1 year, after a long evidentiary hearing, is basically
2 going to cause competition to become stillborn on
3 January 1st, that nobody in their right mind is going
4 to go forward and sign up customers, and no customers
5 are going to sign up until they know with certainty
6 what's going to happen, if they can get a better deal
7 from their competitor than they can from their
8 electric utility. So resolution of this issue now is
9 extremely important for us to have competition on
10 January 1st.

11 CHMN. IRVIN: Commissioner Jennings.

12 COM. JENNINGS: Let me state the unstated.
13 This is essentially a political process as well as a
14 policy process. One candidate for office said that he
15 would derail this and another sitting Commissioner
16 wants to wait until that new Commissioner is on board.
17 And all parties are free to talk to the Commissioners
18 and Commissioners-elect and work their issues behind
19 the scenes, and that's an unavoidable aspect for all
20 this.

21 And I worked on this for four years. I think
22 the issues are manageable. I'm not committed to the
23 settlement at this point. I haven't heard the details
24 of it; I haven't heard the objections to it. But I
25 think it's -- even though it's a somewhat abbreviated

1 process, I think it's a reasonable process, and I'd
2 like to have the opportunity to decide this, and it
3 would be a political event, a coup, if you will, on
4 the process to defer this so that a different
5 Commission can decide this, and I object to that.

6 CHMN. IRVIN: Okay. We have three people
7 that want to address this issue, which I will afford
8 them some time. The issue will be on the procedural
9 order. I don't want this to go into the debates of
10 the merits of the contract or the settlement agreement
11 being proposed by Staff to the Commission, simply
12 because this is not the forum for that.

13 But if you care to address the issue,
14 Mr. Wakefield.

15 MR. WAKEFIELD: I'm sure you'll all stick to
16 the procedural matters, that's why you have a lawyer
17 here instead of the Director.

18 Commissioners, the Supreme Court ruled due
19 process requires notice and opportunity for a hearing,
20 and that that notice and opportunity to be heard be,
21 quote, appropriate to the nature of the case.

22 This is a Constitutional requirement that
23 supersedes the requirements established by the
24 Administrative Procedures Act provided by this
25 Commission's own rules.

1 No one can deny that the issues of stranded
2 costs are the ones that are some of the most important
3 issues the Commission has ever been asked to decide,
4 and now the issue before you is the final number of
5 stranded costs for two of the largest utilities in
6 your jurisdiction.

7 A hearing on December 4th would provide only
8 nine days notice from today, and less than one month
9 from the date the original settlement agreements were
10 made public.

11 RUCO has not dragged its feet in reviewing
12 these matters. We have issued data requests to TEP
13 and APS all along, since they filed their unbundled
14 tariffs earlier this year, and since they filed their
15 stranded cost plans on August 21st. We've accelerated
16 those data requests since the settlement agreement has
17 come out, and we still are not prepared to make a full
18 analysis of these matters and file our testimony on
19 Monday, although we'll try what we do have prepared,
20 if that's necessary.

21 There's five items that I mentioned yesterday
22 that we have not fully analyzed, and will not be able
23 to analyze before a hearing on December 4th or
24 December 7th or whenever that hearing may be in the
25 extremely near future.

1 Those items, again, are the revisions to
2 TEP's unbundled proposed internal findings, impact on
3 TEP's transmission monopoly, the horizontal monopoly
4 impacts on APS requiring TEP's generation, waiver
5 analysis of the waivers proposed in the Commission's
6 rules and orders.

7 RUCO objects to testimony being filed on
8 Monday and a hearing before it has been -- before RUCO
9 has been provided a reasonable opportunity to analyze
10 the settlement agreements.

11 Yesterday we indicated that we agreed with
12 the Attorney General's proposed dates as a minimum
13 requirement for us to make full analysis of this
14 matter. The dates proposed by Staff and those
15 currently scheduled are not appropriate to the nature
16 of this proceeding, given the momentous nature of the
17 issues which the Commission has to decide.

18 Thank you.

19 CHMN. IRVIN: Thank you.

20 Any comment from Staff?

21 MR. ROSE: Yes, Mr. Chairman. If this
22 settlement were occurring in a vacuum, I would
23 certainly agree with Mr. Wakefield, but these issues
24 have been debated extensively in lengthy evidentiary
25 proceedings, particularly stranded costs. Other

1 issues, the unbundled tariffs, have been subject to a
2 lengthy process as well. We believe that adequate due
3 process has been provided and that the schedule is in
4 the public interest.

5 CHMN. IRVIN: Mr. Lynch.

6 MR. LYNCH: Good morning, Mr. Chairman,
7 members of the Commission. I'm Bob Lynch, and I'm
8 appearing here this morning on behalf of the Arizona
9 Transmission Independent Utility Group, the Arizona
10 Consumer Owned Electric Systems, and MSR, a California
11 joint action agency that is an intervenor in this
12 proceeding.

13 I want to start off by disagreeing with the
14 response from the Staff. We've been going through
15 stranded cost proceedings ad nauseam. This matter is
16 not about just stranded cost. And grafted on the
17 matter of dealing with stranded costs, and what
18 recovery the companies will achieve is an asset swap
19 that takes the place of having to deal with
20 mitigation, takes the place of having to deal with
21 what looked like a subsequent administrative process
22 program that would ultimately define dollars or
23 provide a basis for a possible true-up of what was
24 collected in the interim.

25 The asset swap is a sea change difference in

1 your regulatory structure. It is new. We have had
2 notice of its proposal by documents less than 30 days.
3 Those documents themselves are vague. They use what
4 the psychologists call loaded words, words that have
5 undefined meaning but obviously control some thought
6 process that is unexplained.

7 In this context, there is no way that the
8 other parties to this proceeding can have a fair
9 opportunity for real notice and an opportunity to
10 comment.

11 A certain example of this is that none of the
12 filed testimony of the proponents says anything about
13 the admitted motive of at least Staff to address
14 market power issues, and it's a partial motive for
15 coming into the arena of asset swap with a
16 recommendation to go forward.

17 I heard yesterday that there's been a market
18 power analysis, but that was on the old thing. What
19 you're doing is you're creating two new companies, two
20 companies that do not now exist, TRANSCO and a GENCO
21 that will, as this pattern develops, be totally new
22 self-operating, independent, theoretically,
23 freestanding companies that do not now exist and that
24 have different relationships in the Arizona electric
25 community than the companies that now exist. How that

1 will operate is a matter of great concern.

2 Getting the reasonable opportunity to comment
3 in this context is vital. Friday afternoon, when we
4 showed up to get hand-delivered testimony, part of
5 APS' filing was unreadable. That was due at 4:00 on
6 Friday. In my view, that service was not made on us.
7 It probably was not made on others. I know there was
8 a scramble, APS scrambled to do something about it but
9 nevertheless these time frames, as short as they are,
10 have to be complied with, and there are no excuses.

11 MSR, to the best of my knowledge, I've only
12 been retained within the last 24 hours, have not even
13 gotten some of the documents, although they're an
14 intervenor in the Tucson proceeding that, under the
15 procedural order, swept them into the overall
16 settlement proceeding. There is great confusion over
17 the service list and who's in and who is out, who's
18 getting materials and who's not. Under those
19 circumstances, I do not see how delivery of rebuttal
20 testimony on Wednesday at 4:00, for a hearing starting
21 on Thursday at 8:00 a.m., bears any reasonable
22 relationship to procedural due process.

23 This is obviously a rush to judgment, and we
24 think is improper to due process for us. And I'll be
25 happy to answer any questions.

1 CHMN. IRVIN: Mr. Jennings.

2 COM. JENNINGS: Just a comment. These are
3 incredibly sea changes and the intellectual ferment
4 about making this change from a monopoly to a
5 competitive generation market and perhaps ancillary
6 services and billing and metering. It's been out
7 there for six years, and everybody has an opinion, and
8 everybody understands that this is going to be a
9 vastly different world, and not all of it is totally
10 knowable. But the big issues are out there and the
11 impacts are analyzable.

12 You will certainly, if you have not developed
13 an opinion on it how you're affected and your clients
14 are affected on this, you'll be able to get there. I
15 suspect that you know right now what the impacts are,
16 and many of the other parties. And yeah, you'll have
17 to fine tune those insights and, if we go forward and
18 develop them, and present them, and the Commission
19 will decide whether your issues are self-serving or in
20 the public interest, or it's too complex and that we
21 ought to pull back.

22 I don't think, having said all that, it
23 obviates our reason to try to get this done as we've
24 committed to do. And everybody in this room has known
25 of the intent to get this done by the 1st, to meet the

1 deadlines and to try to have a consistent marketplace
2 where public power and private power competes in the
3 same area. This is going to be difficult to do.
4 There's going to be outstanding issues, as far as the
5 eye can see, and things that we hadn't anticipated
6 will arrive.

7 So in my sense, from my sense, we ought to
8 take our best, make our best efforts to see if we are
9 ready to launch, as we've indicated. We should
10 launch, and maybe you'll be able to persuade me at
11 that time that this is just -- there's just so much
12 that isn't known and knowable, and that this is so
13 skeletal that you can't even understand the
14 implications. You'll have some burdens.

15 CHMN. IRVIN: Thank you.

16 Did Staff want to make a comment?

17 MR. ROSE: Mr. Chairman, I would just point
18 out that characterization rush to judgment is not one
19 that I would agree with. We've spent four years
20 discussing these issues as an agency. We believe that
21 there has been discussion of divestiture in the past
22 on the record. We believe that Staff's position is
23 thoroughly supported, and we think that there's been
24 adequate time for Mr. Lynch and all of the folks
25 affected by this to understand what we're doing and

1 present arguments to the Commission.

2 CHMN. IRVIN: Thank you.

3 Mr. Crockett.

4 MR. CROCKETT: Chairman Irvin, Commissioner
5 Jennings, my name is Webb Crockett. I represent
6 ASARCO, Cyprus and Arizonans for Electric Choice in
7 Competition, and I would like to point out that that
8 coalition is made up of most of the corporations doing
9 business within the State of Arizona as well as the
10 Arizona School Board Association, the restaurant
11 association, and all that has an association, and a
12 number of small businesses as well.

13 I'd like to state I probably speak for the
14 business community of this state, with the exception
15 of the electric utilities. I'm very concerned with
16 the agenda that has been scheduled in this matter.
17 I'd like to state that I agree with the comments of
18 Mr. Wakefield with reference to due process.

19 I also agree with the comments of Mr. Lynch
20 that he has made in this regard. When you talk about
21 we've been considering this for four and a half years,
22 yes, we have been considering this for four and a half
23 years. The utilities also knew that they had the
24 deadline of January 1st, 1999 to meet, and what did
25 they do, nothing. They did nothing until about four

1 months ago when they went behind closed doors and
2 started negotiating with the Staff and resolved all of
3 these issues that we had been discussing for the last
4 four years in favor of the utilities.

5 I submit that that does not warrant due
6 process. It does not indicate due process in this
7 particular case. If there was to have been a
8 settlement, why weren't all of the stakeholders there
9 participating in those negotiations so that we could
10 come together on some agreements so we could implement
11 competition on January 1st, 1999?

12 Again, I submit there is nothing to preclude
13 this Commission from implementing competition on
14 January 1st, 1999 under its present rules and under
15 the present order that the Commission has.

16 I understand that somebody said, that one of
17 the Staff member states we're going to have
18 competition in vain and in fact if those settlements
19 are entered. I submit he also made a statement that
20 competition will be stillborn. Competition will be
21 stillborn on January the 1st. There won't be any
22 competition in this state. In order to have
23 competition you have to have someone other than the
24 two utilities. Unless there's competition between the
25 two utilities -- you've got to have utilities. There

1 has not been a single Certificate of Convenience and
2 Necessity ever even issued. There's been one pending
3 for quite some time, no action taken. They certainly
4 can't compete in this state without being authorized.
5 Unless you certificate electric service providers
6 between now and the first of the year there's not
7 going to be anyone to compete.

8 In addition to that, you're talking about
9 customers one megawatt and above competing. Those
10 customers are primarily under special contract.
11 There's no real reason why you have to rush this thing
12 forward at this particular time. Why not give the
13 parties the opportunity to come in and look at the
14 various issues?

15 I'd like to point out the process. The
16 parties that are commenting on the proposed
17 settlements have to file their testimonies and then
18 the utilities file in narrative form. They're waiving
19 the formalities of the question and answer format.
20 Why do that? Because that takes time, don't want to
21 put it in question and answer form. It helps somebody
22 who's doing cross-examination to see what the question
23 was, what the point that the party is making as
24 opposed to have it in narrative form. That benefits,
25 but also it prolongs the hearing. Since it's not in

1 narrative form you've got to ask the question itself,
2 then they will answer, and follow up. That doesn't
3 help.

4 They have to file at 4:00 p.m., the hearing
5 starts at 8:00 a.m. the next morning. How would you
6 like to have to analyze the testimony of at least nine
7 witnesses between 4:00 p.m. and 8:00 a.m. the next
8 morning before starting the hearing?

9 There is just total lack of due process.
10 Even APS finds this schedule is very difficult to meet
11 because when they were ordered to file direct
12 testimony in support of the settlement agreement, what
13 did they do, they filed testimony of two witnesses
14 without even changing the date, without even changing
15 the captions on the thing, testimony that was filed in
16 a hearing that was held by this Commission nine months
17 before in which that testimony was rejected. They had
18 evidence that they hadn't even filed, testimony that
19 says nothing about the settlement and the other
20 issues.

21 How do you prepare testimony in opposition to
22 the testimony of those two witnesses? I assume the
23 utility is intending to still offer those witnesses in
24 support of the settlement. What will they do? They
25 will come back in, I assume, when they file their

1 narrative testimony, and basically adopt their
2 testimony they filed in this other proceeding. How do
3 you prepare for something like that? It's really
4 very, very difficult to move forward.

5 Discovery, I noted, in looking at the
6 discovery that the Attorney General had served upon
7 some of these parties, that they objected to
8 discovery, they refused to answer. In addition to
9 that, they've also claimed confidentiality privilege
10 on some of the other. How do you get through that?
11 Is there time? If there is information that truly
12 needs to be protected you have to have an in camera
13 proceeding in order to review that testimony and see
14 whether that should be disclosed or not.

15 So in any event, four and a half years. Four
16 months of negotiation between the Staff and the
17 utilities behind closed doors, without permitting
18 others to participate, does not gender due process,
19 and cannot. The dates ought to be postponed.

20 We join in the Attorney General's motion. I
21 think that that would give a more reasoned approach to
22 considering these issues. Maybe in the meantime the
23 parties could talk to the utilities and see whether
24 they could resolve some of these issues so they can
25 shorten it.

1 The other thing, too, hearings from 8:00 a.m.
2 till 8:00 p.m., including Saturdays, I'm not aware of
3 this Commission scheduling that type of a hearing
4 schedule before. We did on the stranded cost
5 hearings, we did extend somewhat into the evening to
6 finish up with the witnesses that were scheduled for
7 that date. To schedule hearings from 8:00 a.m. to
8 8:00 p.m., 12 hours, it's very difficult to present
9 evidence during that period of time, and Saturdays.
10 There is an intervening Thanksgiving holiday, there's
11 a lot of people gone on Thursday, off on Friday.
12 Obviously, Saturday and Sunday, you've got to
13 reschedule all of those people.

14 We object to the schedule that has been
15 proposed by Staff. We do think that the hearing date
16 should be postponed. It will be, in my opinion, one
17 of the most important decisions that this Commission
18 will make. This will have a significant impact on the
19 consumers and the residents and the businesses of the
20 State of Arizona, and it just warrants more time and a
21 rush to judgment that we're confronted with here now.

22 Thank you.

23 CHMN. IRVIN: Comments.

24 (No response.)

25 CHMN. IRVIN: Staff, do you care to respond

1 to that?

2 MR. ROSE: No.

3 CHMN. IRVIN: Hearing no more comments on
4 that, I, too, share the concern, but I disagree with
5 this as a rush to judgment. This is something that
6 this Commission and all the parties have been working
7 on for a long time. It has been a very difficult and
8 arduous process. The stone's been cast from all
9 sides.

10 My problem with the AG's decision is that
11 goes until -- the AG's request is that goes until late
12 February. The same arguments, then the utilities come
13 back, we have the same argument, we're back to square
14 one. I see no evidence, based on what I've seen in
15 the past two years since I've been on the Commission,
16 and two years prior to that, that says if we delay
17 this thing that we're going to be any closer to coming
18 up with a decision on competition.

19 What we're doing is we are debating the
20 issues of proposed settlement agreements. As I
21 understand it, the main argument against the
22 settlement agreement is the fact that these arguments
23 say -- these agreements say that if the agreements are
24 changing away, they can be null and void. Well,
25 that's what they say. We'll see how good those

1 agreements are. I think we need to debate those
2 agreements, and that's all we're debating, are those
3 agreements. If those agreements are satisfactory, if
4 those agreements stand the test of public scrutiny,
5 open debate, then that will be, again, the foundation.

6 We're only looking at 20 percent of the
7 markets. We're setting up a foundation. We have seen
8 different plans in different states. I don't see
9 anything that's any better than what we have, or any
10 worse. In some states they have been worse. We can
11 delay.

12 I agree with Staff's characterization on
13 this, these same arguments. I have not heard any new
14 arguments. The new argument I've heard is now we have
15 a proposed agreement that at least the utilities and
16 the Staff are in agreement on. What we don't have an
17 agreement on is whether the industrial areas are going
18 to be able to protect their special contracts, they're
19 going to be able to protect theirs or they get a fair
20 and large enough piece of the pie.

21 This has become, now, which we all knew it
22 would be, in my view, a turf war, who is staking out
23 territories. This has always been a turf war, the
24 utilities fighting for their -- the industrials
25 fighting for themselves, and the residential consumers

1 being left out. We're trying to bring everybody in.

2 I wish we had more time, too. I would like
3 to see more time. But again, it comes back to if not
4 now, when? It was a question that I asked almost a
5 year ago. It's the same question that I ask today, if
6 not now, when? If we don't get some answers, if we
7 don't start the real honest debate, if we don't see
8 the merits of what has been proposed, either pro or
9 con, then when in the heck are we going to get down
10 and force everybody?

11 One thing has been made quite clear and quite
12 evident, that this Commission has demonstrated that.
13 Drop dead dates, somehow, some way, gets people's
14 attention. And Commissioner Jennings says he started
15 this project four years ago at the Commission. We've
16 got now drop dead dates, and all of a sudden there's
17 not new issues, there's the same issues, but presented
18 in a different manner.

19 Let's argue the issues, let's make decisions
20 and let's move forward. The legislature has requested
21 it in their legislation. Salt River Project is ready
22 to move. It is time this Commission has made a
23 promise to the people. It is my time, in my view,
24 this Commission adhere to the process. And by delay
25 as requested by the Attorney General, in my view, not

1 only deceives the public, it will go back into the
2 same thing as saying once again, the government has
3 promised us this and delivered far, far, far less. We
4 have an obligation to the people, as do the utilities.

5 Mr. Crockett, I'm sorry your Thanksgiving is
6 ruined, whether we take the Hearing Officer's proposed
7 schedule or whether we take the Staff proposed
8 schedule, but I agree with you these are very, very
9 important issues. All sides have a tremendous amount
10 of resources and they're going to have to be used. So
11 that's my view on it. We have an obligation, we're
12 opening up 20 percent, this is a framework.

13 It has also been noted by myself, it was
14 noted yesterday by Commissioner Jennings, that the
15 next Commission will also have a responsibility to
16 monitor and will be given the ability to make
17 adjustments in order to move competition. I, for one,
18 had never believed we're going to have a flock of ESPs
19 coming into the market effective January 1 or any time
20 soon. Simply put, when Maytag comes out with a new
21 line of washing machines, not everybody rushes to buy
22 those. I know people that have driven Ford cars since
23 it was invented. People will make change when people
24 are dissatisfied. People will make change when they
25 don't get the service. People will make change when

1 the prices are too high, the prices are too high in
2 Arizona for electricity. We've seen those prices come
3 down. We still have an obligation to bring those
4 prices down more.

5 It is time we, in my opinion, debate the
6 critical issues and come up with some answers. This
7 settlement is a framework for doing that. Let's hear
8 the debates, let's hear the merits of it, let's get on
9 with it from my standpoint.

10 Commissioner.

11 COM. JENNINGS: A quick comment. Yes, it's
12 an aggressive schedule. We are seeking to launch
13 competition January 1st, 1999, and that is -- it
14 hasn't been a secret. It's the public policy of the
15 Commission, it's the public policy of the state. The
16 legislature wanted the Commission to do it, looked at
17 their ability to supersede our jurisdiction and
18 realized they couldn't and shouldn't, but they
19 independently went on to open up Salt River Project
20 actually a day earlier, a date without much of a
21 difference. And yes, people will not have as pleasant
22 a Thanksgiving as desirable.

23 And I would also observe that if the
24 Commission comes to the decision this is a flawed
25 process because there's just too many issues as

1 opposed to the sort of malingering foot dragging that
2 sometimes goes on in this process, if there really
3 just isn't enough time to make sense out of all of
4 this, then the Commission can so determine.

5 And also, if those who are contending, if
6 they earnestly are contending that there is a lack of
7 due process, seems to me that it gives all parties who
8 are contending that, if that is a real substantive due
9 process issue, an enormous amount of leverage, which I
10 suspect it is at the bottom of some of this
11 argumentation, to try to extract some better
12 conditions for their own interests in the competitive
13 marketplace.

14 So that is all open, and the Commission is
15 not obligated to make any particular decision. We can
16 reject this settlement, modify it, and the incumbents
17 may not like it, and it may go over into next year
18 anyway, and we will fail to launch this. This is not
19 the end of the earth. But after four years of working
20 toward a goal, and a fairly broadly shared goal, it
21 would be defunct of us not to make our best efforts to
22 do it. And everybody needs to make adjustments to
23 whatever the Commission decides, and if we decide that
24 competition is going to go forward on some basis such
25 as the settlement or with its modifications, then all

1 parties are going to be able -- are going to be
2 needing to adjust to whatever the Commission decides.

3 And perhaps in the ideal world everyone would
4 have agreed to the basic principles of what the
5 competitive marketplace should look like and what the
6 fair transition is, and at the end of the day, what
7 the structure will look like. But there are winners
8 and losers in competition, and some people wanted to
9 have the opportunity to get in and get a lot of
10 customers right away, and utility investors and
11 companies would like to make sure that they don't lose
12 any money on this deal, and the Commission has to try
13 to sort out all these issues and come up with
14 something that's in the public interest.

15 And I am still quite optimistic that if
16 people roll up their sleeves and give it their best
17 shot, that the Commission can make an intelligent
18 decision, and I believe that we will.

19 CHMN. IRVIN: Any further comments?

20 COM. JENNINGS: Do you want a motion,
21 Mr. Chairman?

22 CHMN. IRVIN: Yes, on this procedural order,
23 sure.

24 COM. JENNINGS: I move Items 5 through 8 for
25 adoption.

1 CHMN. IRVIN: That's a separate procedural
2 order?

3 MR. ROSE: Yes.

4 CHMN. IRVIN: Mr. Bullis.

5 MR. BULLIS: That's right, attached to the
6 memorandum from the Executive Secretary, there's a
7 procedural order, and that would be the motion, to
8 approve that procedural order and those items.

9 COM. JENNINGS: I would so move that
10 procedural order.

11 CHMN. IRVIN: Further motion to move the
12 procedural order?

13 (No response.)

14 CHMN. IRVIN: Further discussion?

15 (No response.)

16 CHMN. IRVIN: Call for a vote.

17 MR. AHEARN: Commissioner Jennings.

18 COM. JENNINGS: Aye.

19 MR. AHEARN: Commissioner Irvin.

20 CHMN. IRVIN: In favor. By a vote of two
21 ayes and one absence, the procedural order will be
22 adopted.

23 (End of Items U-5 through U-8.)

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1 AGENDA ITEM NO. U-9

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CHMN. IRVIN: The next items, Items 10 and 11

we can handle at the same time. I know something

about those items -- is 9 to be handled separately?

I'm sorry, Item 9. Let's go with Item 9.

MR. ROSE: Thank you, Mr. Chairman.

This is a procedural order which would set up
a schedule for the final adoption of the rules. As

you know, we went through an emergency rulemaking

procedure this summer, followed by a permanent

procedure. This order would direct a hearing to issue

its final recommended amendments by December 4th with

exceptions due December 9th, and we would anticipate

bringing this to the Commission at its regularly

scheduled open meeting on December the 10th.

CHMN. IRVIN: What are these for? What are
all these exceptions on?

MR. ROSE: The exceptions to the Hearing
Division's recommended changes will be due on the 9th.

CHMN. IRVIN: Mr. Rudibaugh.

HEARING OFFICER RUDIBAUGH: I'm sorry, for
what again?

MR. ROSE: Exceptions to the recommended
order.

1 CHMN. IRVIN: He's calling for if you're
2 going to file exceptions to what the order is calling
3 for.

4 HEARING OFFICER RUDIBAUGH: We won't file
5 exceptions.

6 MR. ROSE: Not for you. For parties, we'll
7 give them until the 9th to file exceptions to the
8 Hearing Division's recommended order.

9 HEARING OFFICER RUDIBAUGH: I believe for the
10 proposed order there has to be 10 days unless the
11 parties waive that time frame.

12 MR. ROSE: Let me refer that to Janice. I
13 believe the rules allow the Commission to waive that;
14 is that correct?

15 MS. ALWARD: I believe that's the provision
16 in the rule. Your Honor, what is contemplated is that
17 you would direct the Hearing Division to issue an
18 order that would adopt certain amendments for the
19 proposed permanent rule adoptions for electric
20 competition rules, and we would also like the
21 Commission to order that to any party, to file
22 exceptions within five days of that issuance of that
23 order, and then it would go to open meeting on
24 December 10th.

25 HEARING OFFICER RUDIBAUGH: Mr. Chairman, so

1 that I understand, you want the Commission to order
2 the Hearing Division to issue an order as proposed by
3 Staff, end of sentence?

4 MS. ALWARD: Your Honor, we have not filed a
5 proposed order. We've only issued comments related to
6 certain changes to the rules for permanent adoption by
7 the Commission. If you recall, we had had an
8 emergency process and then all the parties had filed
9 its comments on those emergency rules, including
10 Staff.

11 We subsequently, Staff has filed additional
12 comments that reflect concerns that had come up
13 through the CC&N proceedings and also further
14 clarifications of the competition rules.

15 In addition, the Secretary of State has asked
16 we conform the rules language to certain standards as
17 the Secretary of State requires, such as not having
18 the word "two" but spelling it out, and more for
19 purposes of editorial comments.

20 What we'd like now is so that we can have the
21 permanent rules adopted by the Commission on December
22 10th is that the Hearing Division issue a proposed
23 order on those rule changes.

24 CHMN. IRVIN: These permanent rules, these
25 are the ones that have been previously adopted; are

1 they not.

2 MS. ALWARD: That's right, but we adopted
3 emergency changes this summer.

4 CHMN. IRVIN: I'm with you.

5 MS. ALWARD: Those emergency changes will now
6 become permanent. But in the course of this process,
7 we have discovered clarification needs and also the
8 Secretary of State has required certain format changes
9 in the way the rules are written to meet their
10 standards.

11 CHMN. IRVIN: Does it have to be at the
12 December 10th open meeting, or can it be after?

13 MR. ROSE: It depends on whether you wish to
14 reconsider motions for reconsideration by the end of
15 the year. We would need a 20-day period for motions
16 to reconsider, and then the Commission could either
17 vote those up or down.

18 CHMN. IRVIN: I'm with you now. And these --
19 never mind, strike that. I'm with you. I understand
20 the issue.

21 COM. JENNINGS: I'll move Item 9.

22 CHMN. IRVIN: We've heard the motion to move
23 Item 9. Procedural order nine again, I trust?

24 MS. ALWARD: Yes, Your Honor.

25 CHMN. IRVIN: Call for a vote.

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MR. AHEARN: Commissioner Jennings.

COM. JENNINGS: Aye.

MR. AHEARN: Commissioner Irvin.

CHMN. IRVIN: In favor. By a vote of two
eyes and one absence that procedural order is adopted.

(End of Item U-9.)

1 AGENDA ITEMS NOS. U-10 AND U-11

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3 CHMN. IRVIN: Now, Items 10 and 11 together,
4 Citizens Utilities.

5 MR. ROSE: There had been some interest
6 expressed by individual Commissioners in resolving
7 issues related to the Central Arizona Water
8 Utilization plan. You will recall this was an issue
9 debated in the Citizens rate case, I believe it was in
10 April of '97. And Staff has done some research on
11 this, and I will let David Motycka comment.

12 I guess the bottom line is that while we
13 could bring this matter forward before the end of the
14 year, it would be very difficult to do so, and we'd
15 have to take resources from other projects. But let
16 me try to turn it over to David.

17 MR. MOTYCKA: Excuse me, Mr. Chairman,
18 Commissioner Jennings. On October 2nd, Staff had
19 received a filing from Sun City and Sun City West.
20 This is the application for approval of CAP water plan
21 accounting order. Since the application was filed,
22 there had been three requests for intervention within
23 this filing that would be for RUCO, Sun City Taxpayers
24 Association, and the Arizona Utility Investment
25 Association.

1 Additionally, Staff has issued some data
2 requests to Citizens. We have received one back. We
3 have not received one of them back, and we are in the
4 process of sending another one out today. Because of
5 the nature of the filing, it's likely that Staff would
6 be requesting that a hearing be convened on this
7 matter. Given the current conditions, Staff doesn't
8 believe they would be able to get their Staff report
9 completed until first quarter of '99. That's given
10 all the variables that I addressed currently. Plus
11 Staff has not had a complete opportunity to review
12 both of the filings, plus there are other conditions
13 that are setting precedent with Staff. For example,
14 rate cases that do have the time clocks on them,
15 whereas this particular issue does not.

16 COM. JENNINGS: If I could, I'm probably the
17 Commissioner that you're referring to that had
18 expressed an interest in deciding this matter, and for
19 the reason that I felt that the decision -- as you all
20 may recall, there was three separate positions by
21 three Commissioners, and I changed my vote and have
22 not been happy with that decision as being the right
23 decision, not altogether bad, but I would have liked
24 to have cleaned this up before I go. I think I owed
25 it to the folks in Sun City to give the benefit of my

1 judgment.

2 On the other hand, as I read what Staff is
3 saying, and having just heaped a whole lot of other
4 things on the Staff, I'm convinced that this ought not
5 to be rushed through just to accommodate my own
6 conscience and wanting to clean up a decision that I
7 don't think is one of the best. So I won't move 10
8 and 11 and trust that a -- I would hope that the
9 Hearing Division would allow the intervention of the
10 taxpayers and other parties, they've already been
11 done.

12 HEARING OFFICER RUDIBAUGH: It's already been
13 done. We do our job.

14 COM. JENNINGS: There's opportunity to
15 decide, and since I still have the microphone turned
16 on, even though the homeowners group and other groups
17 have rallied around the golf course issue, just from
18 my take on this, sometimes you want to maximize the
19 best scientific outcomes, and one of the least costly
20 price tags, and I hope that that will be a fair
21 proposal to be considered along with what many people
22 in Sun City want, which is to be able to see that that
23 CAP water goes on to those golf courses. That's not
24 an unreasonable request, and we ought to consider
25 honoring the requests of significant members of

1 consumers within a particular service area.

2 On the other hand, the Commission, I think,
3 is well served to look at what is the least costly and
4 best solution which may or may not be that. Having
5 said that, I will let this one sail on and commend a
6 good decision from the new Commission.

7 CHMN. IRVIN: I can trust you will get one.
8 Hearing the lack of a motion, that item will not be
9 brought for discussion.

10 Is Mr. Bullis still here?

11 MS. ALWARD: He's on a conference call with
12 court on another matter.

13 CHMN. IRVIN: Let me ask counsel, I would
14 like that issue, it's not set for hearing, so I'm
15 still allowed to talk without ex parte violations?

16 MS. ALWARD: As long as there's no procedural
17 schedule in place setting the matter.

18 CHMN. IRVIN: If I can see the people from
19 Staff and Citizens Utilities, I have some thoughts
20 that might help to expedite that program.

21 Having said that, no further business before
22 this Commission, we will stand adjourned.

23 (End of Items U-10 and U-11.)

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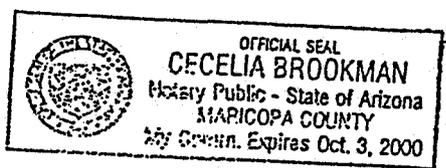
1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, CECELIA BROOKMAN, a notary public in and for the County of Maricopa, State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand and seal this 27th day of November, 1998.

Cecelia Brookman



CECELIA BROOKMAN
 Notary Public

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SUPREME COURT OF ARIZONA

FILED
DEC - 1 1998
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

STATE OF ARIZONA, ex rel GRANT)	Supreme Court
WOODS, Attorney General;)	No. CV-98-0536-SA
RESIDENTIAL UTILITY CONSUMER)	
OFFICE, an Arizona Government)	Maricopa County
Agency; ARIZONA TRANSMISSION)	CV 98-16025
INDEPENDENT UTILITY GROUP, an)	
Arizona Association, ELECTRICAL)	
DISTRICT NO. 3 of PINAL COUNTY,)	
an Arizona Electric District;)	
ELECTRIC DISTRICT NO. 7 OF)	
MARICOPA COUNTY, an Arizona)	
Electric District; MARICOPA)	
COUNTY MUNICIPAL WATER)	
CONSERVATION DISTRICT, an Arizona)	
Water Conservation District,)	
IRRIGATION AND ELECTRIC DISTRICT)	
ASSOCIATION OF ARIZONA, an Arizona)	
association,)	
)	
Petitioners,)	O R D E R
)	
v.)	
)	
ARIZONA CORPORATION COMMISSION,)	
an Arizona Government Agency,)	
)	
Respondent.)	

In conjunction with their Verified Petition for Special Action and Writ of Mandamus, Petitioners have filed a Motion for Immediate Stay of Procedural Order, and a Motion for Oral Argument and Expedited Consideration. The Court has read the pleadings and heard argument by the parties in connection therewith and has read and considered Motions to Intervene or alternatively to Join as Real Parties in Interest by Arizona Public Service Company and Tucson Electric Power Company, and a Request for Joinder as Parties by ASARCO Incorporated, Cypress Climax Metals Company, Enron Corp., and Arizonans for Electric Choice and Competition.

While the Arizona Corporation Commission has discretion over its own procedure, such discretion is necessarily constrained by constitutional standards of due process, Ariz. Const. art. 2, § 4, by the Administrative Procedures Act, e.g., A.R.S. § 41-1061, by the Commission's procedural rules, e.g., A.A.C. R14-3-104 and R14-3-109, and by the appellate and equitable jurisdiction of this Court. A.R.S. § 12-2021. Where the Commission contravenes essential standards, thereby creating a potential for prejudice, mandamus may lie to cure the unlawful procedure. A.R.S. § 40-254(F). The Court does not address the mandamus issue at this time.

In the matter presented, the Commission issued a procedural order on November 25, 1998, setting December 3, 1998, as the commencement of an evidentiary hearing on the matter of settlement agreements negotiated between Commission Staff and Arizona Public Service Company and Tucson Electric Power Company, Inc. The Court has reviewed these agreements and finds them lengthy and complex. Petitioners received notice of the hearing date four business days prior to a hearing which will involve detailed evidence on comprehensive issues. This is plainly insufficient under applicable standards. To consider adequately the interests of taxpayers and rate payers and to balance those interests carefully against the interests of investors in private utility companies, the Commission must allow sufficient time to prepare, evaluate, and present the evidence.

"[A]gency proceedings leading to rate decisions are quasi-

judicial in nature and [are] thus subject to judicial scrutiny and review relating to compliance with statutory requirements and constitutional due process standards." State ex rel. Corbin v. Arizona Corp. Com'n, 143 Ariz. 219, 224, 693 P.2d 362, 367 (App. 1984). Fundamental procedural requirements include a full hearing, and evidence adequate to support pertinent and necessary findings of fact. Id. This, in turn, requires sufficient notice of the hearing for the parties to prepare a satisfactory case and present the necessary evidence for the tribunal's consideration. This fundamental requirement is plainly absent in the instant case. The Court acknowledges that Corbin was a "rate-making" case but points out that the instant case is closely related in that it impacts large numbers of rate-payers and taxpayers, and thus requires application of the same constitutional principles.

The Court finds that Petitioners have no plain, speedy, and adequate remedy at law, and that they will suffer immediate and irreparable harm if the procedural order at issue is not stayed. Therefore,

IT IS ORDERED granting the Motion for Immediate Stay of Procedural Order to permit consideration by the full Court of Petitioners' Verified Petition for Special Action and Writ of Mandamus. Such stay shall remain in effect until further order of this Court.

IT IS FURTHER ORDERED granting the Motions to Intervene by Arizona Public Service Company and Tucson Electric Power Company, and the Motion for Order of Joinder by ASARCO Incorporated,

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

IT IS FURTHER ORDERED granting the Motion for Oral Argument on the Petition and Expedited Consideration. The Respondent, Corporation Commission, shall file its Response not later than December 11, 1998, and parties having joined or intervened shall similarly have until December 11, 1998, to file separate briefs if they wish. Petitioners shall have until December 18, 1998, to submit a Reply and oral argument on the matter shall be heard at 1:30 p.m., January 14, 1999.

DATED this 1st day of December, 1998.



CHARLES E. JONES
Vice Chief Justice

TO:

Grant Woods, Attorney General

Attn: Suzanne M. Dallimore, Esq. and Nancy Bonnell, Esq.

Scott Wakefield, Esq., Residential Utility Consumer Office

Donald R. Allen, Esq. and John P. Coyle, Esq., Duncan & Allen

Robert S. Lynch, Esq.

C. Webb Crockett, Esq. and Jay L. Shapiro, Esq., Fennemore Craig

Raymond S. Heyman, Esq. and Randall H. Warner, Roshka Heyman &

DeWulf, PLC

Daniel J. McAuliffe, Esq., Steven M. Wheeler, Esq. and Jeffrey B.

Guldner, Esq., Snell & Wilmer

Paul A. Bullis, Arizona Corporation Commission

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From: Jack D. Rose
To: SRB
Date: 12/8/98 2:29pm
Subject: Open Meeting

If the Commission passes the Electric Competition Rules on Thursday, please be sure that the order is signed and docketed by 5 p.m. Additional opinions can be docketed at a later date.

CC: COMM

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NOTICE

SPECIAL

OPEN MEETING OF THE ARIZONA CORPORATION COMMISSION

Date: Wednesday, December 30, 1998
Thursday, December 31, 1998

Time: 10:00 a.m.
5:30 p.m.

Hearing Room
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

This shall serve as notice of a special open meeting of the Arizona Corporation Commission at the above location for consideration, deliberation, and possible vote of the items on the following agenda and other matters related thereto. Please be advised that the Commissioners may use this open meeting to ask questions about the matters on the agenda; therefore, the parties to the matters to be discussed or their legal representatives are requested, though not required, to attend. The Commissioners may move to executive session for the purpose of legal advice pursuant to A.R.S. §§ 38-431.03.A.3. and/or 4. on the matters noticed herein.

The Arizona Corporation Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format, by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number (602) 542-0838, E-mail csandoval@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodations.

JACK ROSE
Executive Secretary

AGENDA

Utilities Division

1. Citizens Utilities Company (E-01032C-97-0774) -- Filing of Unbundled and Standard Offer Service Tariffs Pursuant to A.A.C. R14-2-1606
2. Duncan Valley Electric Cooperative, Inc. (E-01703A-97-0694) -- Filing of Unbundled and Standard Offer Service Tariffs Pursuant to A.A.C. R14-2-1606

Special Open Meeting of the
Arizona Corporation Commission
Wednesday, December 30, 1998
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Page 2

3. Mohave Electric Cooperative, Inc. (E-01750A-97-0701) -- Filing of Unbundled and Standard Offer Service Tariffs Pursuant to A.A.C. R14-2-1606
4. PG&E Services Corporation (E-03595A-98-0389) -- Application For a Certificate of Convenience and Necessity (CC&N) to Supply Competitive Services as an Electric Service Provider Pursuant to A.A.C. R14-2-1601, et seq.
5. Sulphur Springs Valley Electric Cooperative, Inc. (E-01575A-97-0706) -- Filing of Unbundled and Standard Offer Service Tariffs Pursuant to A.A.C. R14-2-1606
6. U S WEST Communications, Inc. (T-01051B-97-0024) -- Filing to Revise its Network Services Tariff (Public Access Line Services); Navajo Communications Company (T-01051B-97-0041) -- Filing of Tariffs; Citizens Utilities Company (Mohave County) (T-01032A-97-0042) -- Filing of Tariffs; Citizens Communications of the White Mountains (T-03213A-97-0043) -- Filing of Tariffs: Settlement Agreement
7. Paradise Valley Water Company and Joel C. Smith and Sandra J. Smith dba Mummy Mountain Water Company (W-01342A-98-0678 and W-01303A-98-0678) -- Application for Approval of the Sale of Assets and Transfer of the Certificate of Convenience and Necessity to Provide Water Service in Portions of Maricopa County, Arizona and for an Accounting Order: Settlement Agreement
8. Rulemaking (RE-00000C-94-0165) -- In the Matter of Competition in the Provision of Electric Services Throughout the State of Arizona: Request(s) for Reconsideration of Decision No. 61272

legal

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DEC 31 1998

JIM IRVIN
Commissioner-Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

DOCKETED BY RZW

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

DOCKET NO. RE-00000C-94-0165

Decision No. 61309
ORDER RECEIVED

Open Meeting
December 31, 1998
Phoenix, Arizona

JAN 4 1999

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises,
the Commission finds, concludes and orders that:

FINDINGS OF FACT

1. On December 11, 1998, the Arizona Corporation Commission ("Commission") entered Decision No. 61272 in the above matter.
2. On December 31, 1998, pursuant to A.R.S. § 40-253, the following parties filed applications for rehearing and/or reconsideration: Trico Electric Cooperative, Inc., ASARCO Incorporated, Cyprus Climax Metals Company, Enron Corp. and Arizonans for Electric Choice and Competition, Residential Utility Consumer Office, Tucson Electric Power Company, Arizona Public Service Company, Arizona Transmission Dependent Utility Group, Sulphur Springs Valley Electric Cooperative, Inc., Graham County Electric Cooperative, Inc., Duncan Valley Electric Cooperative, Inc. and Arizona Electric Power Cooperative, Inc.

CONCLUSIONS OF LAW

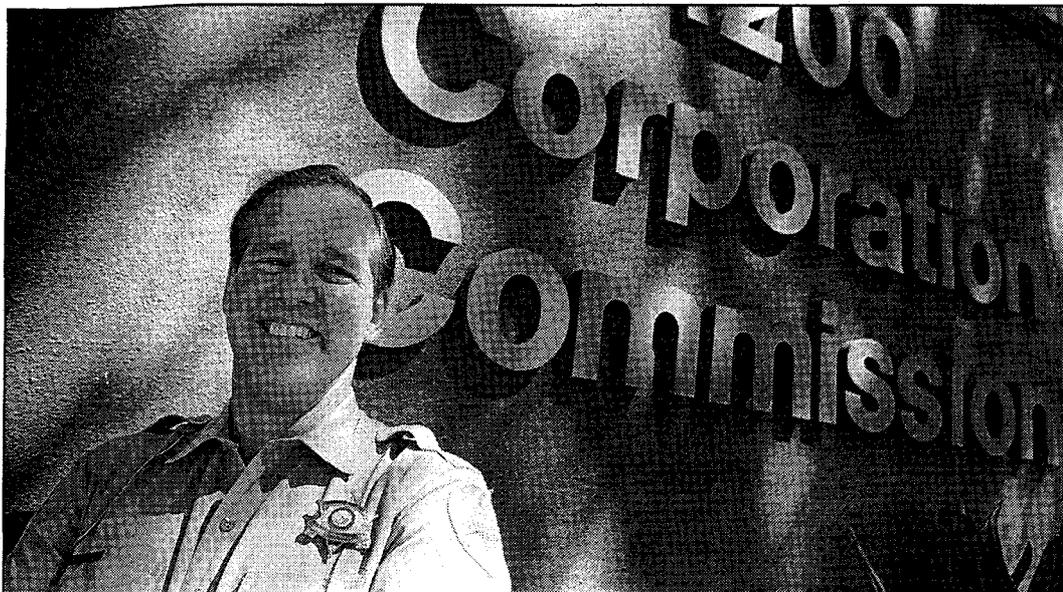
1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-202, 40-203, 40-250, 40-321, 40-322, 40-331, 40-332, 40-336, 40-361, 40-365, 40-367 and A.R.S. Title 40 generally.

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PROFILE

Irvin 'top cop' on and off the job



Cheryl Evans/The Business Journal

Arizona Corporation Commission chairman Jim Irvin says running a security business drives his political involvement.

Commission chief strives for fairness, compassion

By **KEN BROWN**
The Business Journal

Jim Irvin calls the meeting to order and quickly gets down to business. First, he and other commissioners rebuke a few questionable securities dealers. Then they approve several new pay phone operators. Afterward, they set some rural water rates.

Finally the commission moves on to the Big Task: sorting through the most significant changes in the electricity industry since Arizona became a state.

This is the Jim Irvin everyone sees, the chairman of the Arizona Corporation Commission, one of the biggest players in the state's efforts to open the electricity market to competition.

If you run a public company, buy Arizona-based stock, use a phone, enjoy indoor plumbing or have electrical appliances, Irvin has in some way touched your life.

Irvin is serious about moving through the agenda, but he's quick to laugh and just as eager to forgive. During one agenda item, he persuades the other commissioners to drop action against one repentant securities dealer after he agrees to reimburse the friends who lost money from a bad investment.

After hours, another Jim Irvin appears, the one known only by his closest friends and family: the baseball coach consoling a youngster who's just missed a big play. The history buff who doesn't think it's too corny to admire George Washington and Abraham Lincoln. The reserve sheriff's deputy who as corporation commissioner can fine your company for customer service problems — and then give you a ticket for speeding.

Irvin signed up for the deputy reserve years ago and still performs volunteer work on a regular basis. Maricopa County Sheriff Joe Arpaio said it reflects Irvin's willingness to do grunt work for a good cause.

Their friendship is an unlikely offshoot of Irvin's support for Tom Agnos, who was Arpaio's opponent in his first race for sheriff.

"He's not one of these guys who just wants to turn on a red light and siren; that's not what he is," Arpaio said. "He tries to devote his time and energy to protect the people."

Indeed, Irvin sees consumer advocacy as one of his most important jobs at the commission.

The 46-year-old business owner likes to think of himself as a bureaucracy-hating bureaucrat, someone who understands the need for government oversight, but tries to keep it from interfering with legitimate business.

If he sounds like he knows what it means to face overbearing government regulations, he says that's because he has. He said his experience running a security business drives his political involvement.

Although he had been involved in grassroots politics for some time, his first attempt at an elected position came in 1994, when he spent more than \$300,000 of his own money to face Jane Hull for the Republican nomination for Arizona secretary of state. Had he won and beaten the Democrat nominee, Irvin would be governor today.

The unsuccessful attempt, however, didn't sour his experience in politics, and because of his timing — as Arizona transitions into a competitive electricity market — he is likely to make a mark at the Corporation Commission that far exceeds his term.

He's also one of the most controversial figures to head the three-member panel in recent memory. Since his arrival to the Commission in 1996, constant infighting and turmoil have seemed to characterize the agency. Irvin gained his chairmanship after former chairman Carl Kunasek stepped down in a huff.

Irvin said it wasn't the way he had hoped to assume leadership.

"When commissioner Kunasek resigned, I sent him a letter saying 'Don't resign,'" Irvin said. "People have disagreements over time, and to disagree is very beneficial, because then you get both sides of the coin."

Still, Irvin said, he was ready to take the job.

Since then, he has taken on the task with fervor, speaking at deregulation conferences in other states, penning speculative articles for industry magazines and looking for ways to ensure Arizona's access to low-cost and reliable water.

Ironically, much of the resistance he now faces is not a government unwilling to change, but business. As part of the deregulation process, Irvin has had to keep a variety of business interests happy. He admits it hasn't been easy.

"People are afraid of change," he said. "But society's always changing. People are concerned about deregulation, and they should be. But at the same time, who would have imagined 18 years ago that we'd have phones in our cars? I think we'll see some of those same types of innovations in the electric industry."

When he's not trying to leave his mark on Arizona's business community, the father of three spends time with his children, activities that include attending their sporting events, volleyball and basketball.

Although his position often requires taking uncomfortable stances on a variety of issues, Irvin said some of his toughest decisions have occurred elsewhere. He recalled the time he had to cut a 13-year-old boy from the baseball team he coached.

"No matter where you are in life, you have to learn the lesson that nothing's fair," he said. "He was out there with his mom and dad at every practice, and he just didn't make it. It's the toughest thing you can do."

He won't say what specific plans he has for the future, but added that he doesn't think his current position will be his last brush with politics.

"It's a family decision," he said. "I don't need a political office for a job. If it's a political office (where) I can help the community and contribute to the welfare and the betterment of the community, then I'd certainly be interested."

JIM IRVIN

◆◆◆◆◆
Title: Chairman
Organization: Arizona Corporation Commission
Age: 46
Home: Scottsdale
Spouse: Carol
Children: 3
Volunteer work: Reserve deputy, Maricopa County Sheriff's office; baseball coach

UP CLOSE

◆◆◆◆◆
Pet peeves: Dishonesty. Pathological liars.

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Most frustrating aspect of job: Inconsistent federal and state business regulations. "You really get caught in a Catch 22. Employers come to the commission and throw their hands up into the air and say 'What do we do?' The answer is 'I don't know.' Also, I don't get much time to read novels anymore."

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Favorite literature: Mysteries, westerns. Anything by Louis L'Amour, John Grisham or Tom Clancy.

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Biggest surprise on the job: "All the different socioeconomic levels in just our communities. You see people who are working their tail off and are proud of what little they have. And yet you see other people that have all the money in the world who are so reckless because they haven't been caught. It's eye-opening, and reminds you that you need to be fair to everyone."

◆
Philosophy on the role of government in business: "Government doesn't have a carte blanche to do anything it wants. I oppose the taking away of our constitutional rights. Those are fundamental, and I feel that as we pass more laws, we're encroaching on them."

◆
Business advice: "Learn the rules. And don't be afraid to go and ask the government for help. Business often assumes the worst about government. But we want to serve our customers and help them. Give government a chance."