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May 10, 1999

Commissioner Tony West
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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Arizona Corporation Commission
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Re: Decision No. 61634

Dear Commissioner West:

I have read the comments prepared for you regarding my dissent in Decision No. 61634, and my question remains unanswered: how are the changes to the Electric Competition Rules in the interest of the public and the average consumer? It is unfortunate that you have chosen to focus on one paragraph of my dissenting opinion – disregarding the remaining pages which contain a point by point analysis of why I dissented, and how in my opinion the Rule changes favor utilities to the detriment of consumers.

You are entitled to the opinion that questioning these changes in the interest of ratepayers and fair competition qualifies as "posturing" and "self-serving." However, you must realize that the primary purpose in restructuring the electric industry is to benefit residential and small business consumers through customer choice, technological innovations and – most importantly – lower rates. Larger customers have always had the opportunity to negotiate special contracts with utilities to lower their power costs.

If you would please provide me with a constructive letter exposing the "falsehoods" and "misstatement of facts" you allege fill my dissent, this Commission may perhaps begin debating the issues I've raised:

1) How does eliminating the affiliate transaction rules foster competition and ensure consumers true choice in electric providers?

2) How does allowing affected utilities to develop their own methodology for stranded cost recovery protect the public from over-recovery?

3) Why shouldn't residential and small business consumers be able to aggregate their loads into one purchasing block, so they can negotiate for discounts available only to large customers?

4) Why shouldn't Arizona begin developing environmental energies which can lead to cleaner power and economic development in areas around the state?

I believe the current process has not afforded the public substantive input – input which both you and Commissioner Kunasek called for in staying the Rules – into the changes adopted on April 14, 1999. Why didn't this Commission hold even one public meeting prior to considering the proposed changes (driven by utilities and large industrial customers) at the April 14, 1999, Open Meeting? These public comment session hearings – which have been scheduled for a time when all three Commissioners are unavailable to attend, and dates which you continue to support – will not give the public valuable input into a debate that has the appearance of already being decided.

Moreover, the fact that no utilities or large industrial customers have complained about the current process or ex parte communications speaks highly to my assertion that these changes favor them to the detriment of residential and small business customers. Conversely, "concerns" about the adoption of the electric rules and Stranded Cost Order in 1998, voiced by these same utilities and industrial interests, were perhaps the result of a final product not so favorable to them.

On December 29, 1998, in a letter penned while you were still State Treasurer, you stated that,

> "It appears as though the intent of the Commission is to establish electric competition on a piecemeal basis, without any compelling public interest argument. In fact, due to the lack of **public disclosure** and due process, there is an appearance that this Commission's actions are **anti-consumer, anti-rate payor, and anti-competitive.**"

Based on your written statement, one might assume you would seek public input *prior* to considering proposed changes to the Electric Competition Rules. This did not occur. Additionally, one could also assume that you would only adopt changes which ensured that the Rules are not "*anti-consumer, anti-ratepayer, and anti-competitive.*" This too, has not occurred. Again, I would prefer a constructive letter from your office explaining these inconsistencies.

It is a popular strategy for politicians to deflect focus from themselves by shifting it elsewhere. Attacking the 1998 process does nothing to justify the adoption of changes to the Electric Competition Rules without meaningful public input, as called for by both you and Commissioner Kunasek in staying the Rules. Likewise, failing to explain how the Commission did not violate the provisions of A.R.S. § 40-252 and its "*opportunity to be heard*" requirement does not justify the arbitrary changes made to the Stranded Cost Order.

Finally, I am reminded of your campaign promise to bring, "Competency, Civility and Professionalism," back to a Commission that you claimed was dysfunctional. However, I find the tone of your May 3, 1999, letter to be much less than civil.

I am proud – not humiliated – of the Commission's effort to implement competition by the beginning of this year, as evidenced by the fact that nearly 90% of the Rules as adopted in 1998 remain intact. I am not questioning the process or changes simply to see this Commission fail to bring true competition and ratepayer benefits to Arizona – I am doing these things because the people *I* represent elected me to protect *their* interests.

Moreover, I do not see any connection between my dissent in Decision No. 61634, and my pet peeves regarding "dishonesty" and "pathological liars." If you are insinuating that I fall into one of these categories based on that dissent, please provide specific references. Otherwise, your tired rhetoric remains counterproductive.

I am hoping that your office will provide some answers to the meaningful questions posed throughout this letter, not only to ensure the public interest in this matter, but so that we may "focus our efforts to the task in front of us."

Sincerely,

Jim Irvin

Jim Irvin, Chairman
Arizona Corporation Commission

Cc: Commissioner Kunasek