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BEFORE THE ARIZONA CORPORATION COMMISSION

Jim Irvin, Commissioner Chairman  
Tony West, Commissioner  
Carl J. Kunasek, Commissioner

Arizona Corporation Commission  
DOCKETED

MAY 13 1999

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

DOCKETED BY *my*

Docket No. RE-00000C-94-0165

COMMENTS OF ENRON CORP.  
PURSUANT TO PROCEDURAL ORDER

In the Procedural Order issued in the above-captioned docket on April 21, 1999, the Arizona Corporation Commission ("Commission") invited interested parties to file written comments on the proposed electric competition rules issued in Decision No. 61634 on April 14, 1999. Enron Corp. files these comments pursuant to the procedural order.

Enron has a serious concern with one of the changes the Commission made to its competition rules at the April 14, 1999 meeting. The Affiliate Transactions Rule, R14-2-1616, was revised to eliminate specific provisions governing the interaction between Affected Utilities and their marketing affiliates (which offer competitive services). As modified, the Rule simply provides that "[n]o later than 90 days after adoption of these Rules, each Affected Utility which plans to offer Noncompetitive Services and Competitive Services through its competitive electric affiliate shall propose a code of conduct to prevent anti-competitive activities." Prior to its modification, the Rule contained detailed prohibitions and proscriptions on certain activities by the utility.

1 These prohibitions and proscriptions were clearly designed to prevent the Affected Utility  
2 from abusing or unfairly exerting market power it possesses due to its inherent, historic  
3 monopoly position. The original Rule required the Affected Utility (or Utility  
4 Distribution Company) and any marketing affiliate to operate as separate corporate  
5 entities and to keep separate books and records. The Rule prohibited the sharing of office  
6 space, equipment, services and systems, as well as shared access to information or  
7 computer systems (with certain exceptions). The Rule also contained pricing, reporting  
8 and conduct rules for sharing certain corporate support functions, limited the marketing  
9 affiliate's use of the utility distribution company's name or logo and restricted the sharing  
10 of advertising space, joint advertising, personnel, marketing and sales. There were  
11 provisions governing the transfer of goods and services between the utility and the  
12 affiliates; prohibitions on cross-subsidization and access to confidential information;  
13 conditions for disseminating non-public consumer information; requirements for  
14 maintaining records documenting all tariffed and nontariffed transactions with affiliates;  
15 and various non-discrimination requirements.

16 In its new version, the Rule fails to specify what issues or abuses must be  
17 addressed by the code of conduct that each affected utility must file. Absent such  
18 guidance, there will be no uniformity among the Affected Utilities' codes of conduct.  
19 Lack of uniformity will lead to confusion among parties as to the type of activities that  
20 are subject to prosecution, and those activities that, while providing unfair benefits to the  
21 utility's affiliate, may be acceptable. For example, if one utility's tariffed code of  
22 conduct prohibits it from providing leads to and soliciting business on behalf of its  
23 marketing affiliate, and another utility's code does not contain such a provision, can the

1 second utility legally give its marketing affiliate leads and solicit business for the  
2 marketing affiliate? Surely the utility with the code of conduct that does not prohibit  
3 leads and solicitation will argue that silence is tantamount to approval of such activities.  
4 Unless there is a fairly standardized code of conduct throughout the state, market  
5 participants will not know what the rules are and which actions violate those rules and  
6 which actions do not. Differing interpretations may arise due to language differences in  
7 different utility tariffs, adding to the confusion. Moreover, when utilities within a market  
8 have different tariff provisions, competitive marketers must assimilate and analyze the  
9 different tariffs, and set up the back office structure to accommodate these differences.  
10 This effort requires additional resources, adding unnecessarily to the cost of doing  
11 business in Arizona.

12 While a lack of uniformity in codes of conduct presents a barrier to the  
13 developing marketplace, even more worrisome is the fact that under the revised rule, the  
14 Affected Utility may file a code of conduct which is utterly silent on significant market  
15 power issues. Since the Commission has no longer directed through its regulations that  
16 the codes address certain areas, parties apparently have no recourse to demand that these  
17 concerns be addressed in each Affected Utility's code of conduct. If the utility is not  
18 obligated to incorporate a minimum set of elements in its code of conduct, we can assume  
19 the code it will file will not address the entire realm of potential abuses.

20 The laissez-faire approach taken in the revised Rule, which leaves the contents  
21 and scope of the code of conduct to each Affected Utility, is largely unprecedented in  
22 Enron's experience.<sup>1</sup> When the Federal Energy Regulatory Commission opened the

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<sup>1</sup> In New York, the Public Service Commission did not require specific provisions to be incorporated into individual utilities' codes. The codes of conduct were part of each utility's individually negotiated

1 wholesale gas and electric markets to competition, it laid out, in Order Nos. 636 and 889,  
2 specific rules which each pipeline and electric utility had to incorporate into its tariff. In  
3 California, the PUC adopted rules which specified prohibited conduct and set certain  
4 standards. The California rules mandated non-discriminatory treatment, set disclosure  
5 and information standards, required separation of facilities and employees, and addressed  
6 corporate support functions, and the transfer of goods, services and assets between the  
7 utility and its affiliate. In New Mexico, the Electric Industry Restructuring Act of 1999  
8 was signed into law last month. Section 8 of that Act directs the Public Regulation  
9 Commission to adopt codes of conduct that: (i) prevent undue discrimination in favor of  
10 affiliates and anticompetitive practices; (ii) grant customers and their suppliers non-  
11 discriminatory access to facilities; (iii) prevent disclosure of customer information  
12 without written consent; (iv) prevent disclosure of aggregated information unless made  
13 available to all competitors on the same basis; (v) require that unfairly obtained  
14 information not be used for commercial purposes; (vi) prohibit cross-subsidies between  
15 the utility and its affiliate; and (vii) restrict the affiliate's ability to publicize its  
16 affiliation with the utility. The New Mexico Commission must also issue a statement of  
17 policy regarding cross-subsidies and separation of services, safeguards to prevent sharing  
18 of employees, goods, services and facilities, preferential service to affiliates, and  
19 monopoly coercion.

20 As Enron stated in its Exceptions to Recommendations filed jointly with Asarco,  
21 Inc., Cyprus Climax Metals Co. and the Arizonans for Electric Choice and Competition

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settlement. Many unfair practices were not prohibited or were even specifically permitted under these codes (unrestricted use of the company name and logo by the utility affiliate, for example). Legislation has been introduced by both parties in New York to require the New York Public Service Commission to adopt uniform standards of conduct applicable to all utilities to ensure that the regulated utility does not provide

1 on February 17, 1999 in this proceeding, affiliate transaction rules and codes of conduct  
2 are necessary to address potential abuses that arise out of the market power retained by  
3 incumbent utilities. Traditional consumer protection mechanisms may not adequately  
4 address commercial practices in the restructured industry. To let the incumbent utilities  
5 themselves write the new rules of conduct is truly tantamount to turning the henhouse  
6 over to the foxes.

7 Enron's concern that the utilities and their marketing affiliates can work unfair  
8 practices into the marketplace is based on our real-life experiences in opening markets.  
9 We have seen utilities disparage third party marketers to customers, selectively enforce  
10 tariff provisions to the detriment of third party suppliers, and refuse to deal with  
11 customers seeking transmission or other services unless the customer agreed to buy  
12 power from the utility. We have seen situations where our requests for information from  
13 a utility related to service to a particular customer with whom we were negotiating  
14 triggered sales calls to that same customer by the utility's marketing affiliate. Absent  
15 clear codes of conduct, Enron and other energy service providers would be hard pressed  
16 to seek redress of these abuses. Establishing that they have occurred is difficult enough;  
17 customers often balk at getting involved in disputes between competitors. But if the third  
18 party providers must prove not only that the activity occurred, but that it was an unfair  
19 trade practice to begin with, the burden of bringing these complaints is made even more  
20 onerous by the lack of a uniform code of conduct created and adopted by the  
21 Commission.

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any advantage or subsidy to its affiliate and the utility' and affiliate's activities pose no barriers to the introduction and maintenance of a competitive market.

1           Finally, Enron's concern with the lack of specific codes is heightened by the  
2 Commission's Stranded Cost Rules revised by the Commission on April 14, 1999. The  
3 new Stranded Cost Rules fail to require the utility to divest itself of its generation assets,  
4 and thus its position as a vertical monopoly. The utility may, under one of several  
5 alternatives in the Rules, transfer its generation assets to an affiliated company. The  
6 incumbent utility's market power derives in large measure from ownership of the  
7 generation assets. The generation plant which the utility controls has been designed over  
8 time to meet utility's native load. That generation plant, if kept under the utility's (or its  
9 affiliate's) sole ownership, will have tremendous competitive advantages over other  
10 generation sources due to its location and operational characteristics.<sup>2</sup> From a practical  
11 point of view, the utility has made competitive service to its native customers from  
12 outside generation sources more expensive and difficult. The scenario that this leads to is  
13 that all locally produced or easily accessible power is owned by the utility's affiliate, and  
14 competitive electric service providers will be forced to bring in power from generation  
15 sources in remote locations or to build new plants from scratch. Remote power will be  
16 more expensive due to increased transmission costs. New merchant power plants may be  
17 more efficient in the long run, but will not be up and running en mass on the first day of  
18 retail access to successfully combat the utility affiliate's generation advantage. The  
19 utility's affiliate then has the advantage at the outset of having cheaper, more accessible  
20 power than any of its competitors. If the Commission is not going to require divestiture  
21 as a measure to mitigate market power, then it must create stringent affiliate rules to

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<sup>2</sup> These generation assets will also be more competitively priced, due to stranded cost recovery of its above-market value and also potentially by the valuation it is given in the transfer to the affiliate. If the transfer value is less than the market value, the affiliate has received a windfall in that it will sell the power at market, but produces it at a lower, ratepayer-subsidized value.

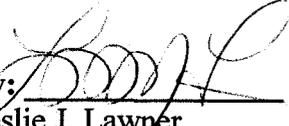
1 prevent the utilities and their affiliates from using their residual market power to  
2 thwarting the development of a vigorous and fair marketplace.

3 WHEREFORE, in light of the foregoing discussion, Enron respectfully requests  
4 that the Commission reverse its action on R14-2-1616 and reinstate the earlier version of  
5 this rule which expressly sets forth the provisions that must be contained in each utility's  
6 code of conduct to be filed with the Commission as part of its electric restructuring plan.

7 Dated: May 13, 1999

Respectfully submitted,

8 **ENRON CORP.**

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11 **By:**   
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14 Enron Corp.  
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1 ORIGINAL AND TEN COPIES  
2 of the foregoing hand-delivered  
3 this 13 day of May, 1999, to:

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

5 COPY OF THE FOREGOING  
6 hand-delivered this 13 day  
7 of May, 1999 to:

7 Jim Irvin  
8 Commissioner - Chairman  
9 Arizona Corporation Commission  
10 1200 West Washington  
11 Phoenix, Arizona 85007

10 Tony West  
11 Commissioner  
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14 Phoenix, Arizona 85007

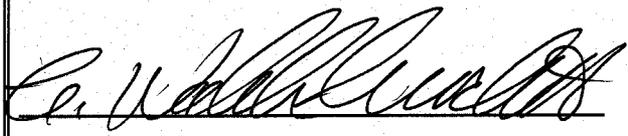
13 Carl J. Kunasek  
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16 Jerry Rudibaugh, Chief Hearing Officer  
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1 COPY OF THE FOREGOING  
2 mailed this ~~12<sup>th</sup>~~ day of May, 1999 to  
3 Electric Competition Service List

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