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BEFORE THE ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION

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

Commonwealth Energy Corporation ("Commonwealth") submits these comments on the proposed Electric Competition Rules ("the rules") which were adopted during the April 14, 1999 Special Open Meeting and Decision No. 61634, dated April 23, 1999.

Commonwealth Chairman/CEO Frederick Bloom appeared before the Commission during the April 14, 1999 Special Open Meeting. On April 29, 1999, Commonwealth applied to intervene in this proceeding. These comments are submitted in hopeful anticipation the aforescribed motion will be granted.

RESPECTFULLY SUBMITTED this 14th day of May 1999.

DOUGLAS C. NELSON, P.C.

Douglas C. Nelson, Esq.
7000 North 16th Street, Ste. 120
PMB 307
Phoenix, Arizona 85020
Attorney on behalf of Commonwealth Energy Corporation

ORIGINAL and ten copies of the foregoing filed this 14th day of May, 1999 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission

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2 this 14th day of May, 1999 to:

3 Jerry Rudibaugh, Chief Hearing Officer
4 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

5 Paul Bullis, Chief Counsel
6 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

7 Ray Williamson, Acting Director
8 Utilities Division
9 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

10 **COPIES** of the foregoing *mailed*
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12 Electric Competition Service List - Docket No. RE-00000C-94-0165

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COMMENTS OF COMMONWEALTH ENERGY CORPORATION

May 14, 1999

Commonwealth Energy Corporation ("Commonwealth") desires to serve all electric customers of all classes and size. Commonwealth, a licensed power market with the Federal Energy Regulatory Commission, is also registered with the California Public Utilities Commission as an electric service provider (License No. 1092).

1. INTRODUCTION

Commonwealth is taking a first hopeful step toward creating an open electric market in Arizona. It is a highly problematic effort, given the recent shift in the Electric Competition Rules ("the rules").¹ Several alternative providers have filed applications. All are hesitant to dive into the residential and small business market. As with any business, one must size up the market potential, the rules of engagement with the utilities and competitors, and the risks relative to potential rewards. Commonwealth's decision will of course depend on how it is treated under the electric competition rules. One challenge lies in opening up the market while modifying these rules so as to avoid further delays in this 5-year process.²

Commonwealth is a power provider in California and naturally wants markets to open up. It has invested a lot of money in marketing to residential and small business consumers in California. Ironically, as competition is moving forward in Arizona the smaller consumers have been for the most part written off. Amid criticism that no electric service provider (ESP) desires to serve residential, schools and small businesses, CEC offers these recommendations.

These comments are from the perspective of an ESP who desires to serve all customers. The attachment contains proposed affiliate guidelines which should be adopted. Commonwealth further requests that a consolidated workshop begin immediately to address the technical implementation of these rules. That request was submitted to Commission staff on May 13, 1999 and filed concurrently with these comments.

2. CORNERSTONES OF COMPETITION

Competition is best when it is simplest. The reasoning behind each rule should be explored so as to implement a pragmatic, reliable and consumer-friendly process. The proposed rules, which eliminated many regulations for the utility, now impose new barriers for ESPs.

For competition to occur, two elements are necessary: more and meaningful choices, and vigorous rivalry. Such competition was initially envisioned, but may not be realized in Arizona, with these utility-favoring rules. To the extent the proposed rules do not trust the market, the utility is being asked to serve as the guardian of the "public interest."

Cornerstones of competition include oral third-party verification of customer transactions, the widest access to all customers, uniform procedures among all utilities, the adoption of affiliate rules, clear cost allocations for utility-provided services, and a meaningful generation shopping credit. These are simple concepts. The rules must be guided by these concepts in order for Commonwealth to compete.

¹ Reference to "the rules" is the proposed rules which on April 23, 1999 in Decision No. 61634 amend the rules adopted on Dec. 11, 1998 in Decision No. 61722 (R12-2-201 through -204, -208 through -211, R14-2-16-2 through -1618).

² A May 12, 1994 *Arizona Republic* article entitled "Utilities Brace for 'Wheeling'" said Commission staff were holding discussions about retail wheeling in Arizona. The fifth anniversary has now passed.

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a. Commonwealth's California Experience Could Create Power Savings for Arizona Consumers

Arizona utilities sell excess power to one another at prices typically reflecting their variable cost of production, plus a profit. The fixed costs of generation assets are typically recovered separately through regulated tariffs. This excess power is also sold in California. Since March 1, 1998, California consumers have been benefitting from electric restructuring. Commonwealth has more than 50,000 small customers in California. Arizona utilities with access to the California market are able to sell their excess energy. This process inevitably has shifted some value to California consumers. Commonwealth desires to create similar opportunity of power savings and value for Arizona customers.

b. New Entrants Start Without a Dominant Presence

ESP's have no guarantees; the utility has familiarity with the Commission process, name recognition, and the ratepayer-revenue stream through the parent affiliate. With a competitive affiliate within its arsenal, the utility has ready access to 100% of its previous customers. With its statewide presence, the utility can serve customers elsewhere in Arizona as well as in California. Commonwealth must rely solely on its own resources, innovations and initiatives. The electric service business is one where size and efficiency mean everything. The incumbent utility has the size. Commonwealth believes it has the efficiency.

Contrary to cost-based rates, the market-based prices of competitors must follow the market. No duty is owed to reflect actual costs, except for the marginal cost floor to avoid predatory pricing. Power-cost savings are dependent upon competition. Competition occurs only if the market has alternative providers. ESP's will enter the free market only if they have a reasonable opportunity to earn a profit. The basic fact is risk must equal reward. Commonwealth is happy to compete, but it wants to do so in the marketplace, not under the utility's thumb.

c. Customer Contact Is a Must

Winning over customers from the incumbent utility is a challenge. The utility has a captive audience when customers receive their monthly bills. Commonwealth must search for the few customers who are eligible. Commonwealth must create its own visibility and offer savings and quality services. Commonwealth is not alone. It must compete with other providers, in addition to the utility, for these limited customers.

Marketing is all about information and knowledge of the customer. It creates a basis for a long-term relationship. More and better information will flow so customers and providers can understand and better manage their choices and services. As for any business, consumer connection is a must. There are, in this business, advantages to scale that are not just economic. Interactions with customers allow for information – about the consumers' demands and their receptivity to conservation, environmental-sensitive opportunities and other products. Competitors bring innovative new products to consumers. The revolution in technology and increased competition in power alternatives gives consumers more choices than ever before. This requires direct contact with customers.

d. Most Customers Are Initially Denied Choice

The competitive electric market should not be exclusionary in any way. The rules should widen the market. Only a few residential customers are granted choice. Most small business customers are effectively excluded because of arbitrary load size or location. In effect, residential and small business customers are being written off by the rules until later. They should be able to share in the low-energy cost advantage that their neighbors and larger business competitors enjoy.

The rules discriminate against smaller customers with less than 1 megawatt (Mw) load or who cannot aggregate their 40 kilowatts (kW's) loads into more than 1 Mw at a "single premise."

1 R1604.A.1&2.³ Implicit is the notion that alternative providers will not serve commercial customers
2 of loads less than a megawatt, and that a customer's meters at more than one location creates some
3 technical or operational impediment. Neither reason is true. Commonwealth wants to serve
4 commercial loads of all sizes. The utilities argue that they need the hourly consumption data before
5 they should be obligated to release this smaller customer. This is an unnecessary and unreasonable
6 constraint on competitive markets. The utilities have failed to explain how that data might be used
7 so that they might operate differently in the future. The 1 Mw and 40 kW cutoffs for customer
8 participation are arbitrary. The *Economic, Small Business and Consumer Impact Statement* fails to
9 address the economic and competitive consequences on the small customers who are denied equal
10 access, as compared to their larger business rivals.⁴

11 Most residential customers will also be denied reasonable access to competitive electric
12 services. The incumbent utility creates the "waiting list" of residential customers who might qualify.
13 R1604.B.2. Some customers might sign up with no intent of actually purchasing competitive
14 services. The rules, as interpreted by Commonwealth, state that the minimum percentage may be
15 exceeded so that any residential customer who desires alternative service may complete that
16 transaction. R1604.B.1.

17 Commonwealth should not have to obtain a customer list from its competing utility in order
18 to market. The utility should not be "the gatekeeper" of those who desire competitive electric
19 services. If the residential list concept is retained, it should be distributed to all electric service
20 providers. Otherwise, the transaction costs of searching for those who signed up would be so high
21 as to make it inefficient to enter the Arizona market. No other commercial enterprise requires this
22 type of market barrier.

23 All customers will be eligible to obtain competitive services no later than January 1, 2001.
24 R1604.D. As a practical matter, the phase-in is merely addressing competition during the year 2000.
25 It seems unnecessary to impose a one-year constraint on customers who desire choice, particularly
26 since the Commission and stakeholders have been preparing for this transition over the past 5 years.
27 Previously, the Commission considered the phase-in process for two reasons: stranded cost recovery,
28 and work load in handling switching. With more customers under the regulated rate, stranded costs
were thought to decline faster or at least be less contentious. With the success the utilities have had
in delaying competition, this is no longer an issue -- 5 years of stranded cost recovery has already
occurred. As to the utility's work load in handling switching, they have had more than ample time
to gear up and it is well known that customers gradually switch. Consequently, the work load issue
is no longer valid.

Commonwealth urges the Commission to order full open competition immediately upon the
conclusion of the stranded cost/unbundling proceedings. Any further delay will reduce the
opportunity for lower-cost generation in Arizona because of the regional wholesale generation market
which the Commonwealth customers are now enjoying.

Customers are further barred from competition because of switching rules and deposit
requirements. Higher deposits from the least able are mandated by the rules. This deters ESPs from
serving and disenfranchises small customers from the competitive process, as will be explained later.

3. REMOVING BARRIERS TO ENTRY SO ESPs MAY COMPETE

³ The rules are cited by reference only to the section under the Retail Electric Competition Art. 16.

⁴ This *Statement* is attached as Appendix B to the proposed rules. The earlier *Statement* in Decision No. 61272 does not address the competitive disadvantage created for small businesses created by this exclusionary load limits, either.

1 Commonwealth doesn't want utility-managed competition. It does want market competition.
2 The utility has designed its competitive process starting with control over more than 80% of the
3 market. As a monopoly with a 100% market base, it is not surprising that barriers have been
4 constructed by the utility so as to retain that advantage. Instead of making choice easy, the rules
5 contain numerous barriers.

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13 **a. Limiting Customer Access Excludes Certain Competitors by Driving Up
14 Transaction Costs**

15 Mass account marketing requires unrestricted access to customers. With the emerging
16 competitive market in Arizona, some customers may be profitable while others may not be.
17 Therefore, a wide marketing base is needed. Large clusters of potential customers create opportunity
18 for alternative providers, because greater size reduces a company's relative cost of equipping and
19 managing a marketing system. Alternative providers will incur significantly higher transaction costs
20 in finding the qualified or "utility-permitted" participant under the rules. These higher costs relative
21 to serving standard offer customers limit the ability of certain rivals to compete.

22 Raising the bar on transaction costs is a means for denying access, for both customers and
23 competitors. When deploying a market plan, the cost of informing and soliciting customers is
24 significant. Advertising is discouraged by the rules. Because only a few and selected customers may
25 participate, mass marketing through print and electronic media is inefficient and wasteful. Thus,
26 utilities are given the upper hand through the writing and distribution of consumer information
27 through their bill stuffers and newsletters. This is the only direct link to customers. To avoid this
28 anti-competitive condition, Commonwealth urges that all customers in all service territories be
opened to competitive electric service.

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28 **b. Oral Third-Party Verification Should Be Permitted**

14 Commonwealth urges the Commission to adopt the third-party verification of oral
15 transactions, in addition to the written authorization option. One of the fundamental features of
16 marketing is customer convenience. Another is to keep transaction costs as low as possible.
17 Telephonic customer approval with verification by an independent, Commission-approved agency will
18 accomplish these goals while protecting against slamming. Once the customer has selected
19 Commonwealth, it will send the new customer a packet containing consumer information, label and
20 written terms of the agreement. The residential customer of course still may rescind within three
21 business days of receipt of confirmation if they are not satisfied with the decision, under R1612.D and
R1617.F(8).

19 This process has worked well in California, with Commonwealth's serving more than 50,000
20 customers. Virtually no challenges have been made to these oral transactions which are verified by
21 a neutral third-party. To protect against slamming, Maine also followed California in allowing third-
22 party oral verification to establish customer authorization to switch providers.⁵

22 Permission to switch can be readily stored and retrieved. The independent third party verifier
23 can be contacted for confirmation of the approval by the utility or Commission. This technology
24 allows for large amounts of information to be transmitted quickly. "Paper" approval is outdated,
25 costly and time-consuming. "Voice" approval, with third-party independent verification, is capable
26 of handling more transactions in a more reliable manner.

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⁵ Maine P.U.C., *Docket No. 98-608* (Feb. 3, 1999).

1 The rules require the Electronic Data Interchange ("EDI") be used for the exchange of
2 business documents, recognizing the cost efficiencies and technologies available today. R1601(13)
3 and R1612.K(4) & (5). Likewise, customers and providers should be entitled to enjoy the same
4 conveniences and efficiencies, while protecting against unauthorized switching and misinformation
5 through preapproval of consumer information and labeling by the Commission and the third-party
6 verifier. Requiring only written authorization before the switching process adds additional postage,
7 paper and personnel costs which have proven to be an insurmountable barrier to entry.

8 Commonwealth strongly urges that the first two sentences of R1612.C. be amended to read:
9 "No consumer shall be deemed to have changed providers of any service authorized in this Article
10 (including changes from the Affected Utility to another provider) without written or third-party oral
11 verified authorization by the consumer for service from the new provider. If a consumer is switched
12 to a different ('new') provider without such written authorization, the new provider shall cause
13 service by the previous provider to be resumed and the new provider shall bear all costs associated
14 with switching the consumer back to the previous provider."

15 The utility's distribution company ("UDC") is granted the right to review and audit written
16 authorizations, under Proposed Rule 1612.C. UDCs in Arizona have corporate affiliates who are
17 competitors with other providers. Clearly, this is a case where the residual monopolistic interests of
18 the utility (the UDC) have the opportunity to review the files and practices of its corporate
19 competitors. Commonwealth strongly urges that this sentence be stricken from Rule 1612.C and the
20 following language substituted: "The Commission has the right to review or audit authorizations to
21 assure a customer switch was properly authorized."

22 In conformity with these prior recommendations, the fourth sentence of Rule 1612.C should
23 be modified to read: "An written authorization that is obtained by deceit or deceptive practices shall
24 not be deemed a valid written authorization." Likewise, Rule 1617.G(2) should be deleted.

25 c. Customer Data Should Not be Controlled by the Utility

26 The utility knows which customers are buying, when and how much. Armed with that
27 knowledge, it can influence customers either by convincing them to extend special contracts or by
28 encouraging them to not stray from the standard offer or buy from its competitive affiliate. The utility
guards the customer's data, not to protect the customer from state-approved ESPs, but rather to keep
ESP's from determining the customer's potential for choice and profitability.

Raised in the initial workshop on electric restructuring was the incumbent utility's retention
of market power through use of customer information and denial of access to new entrants. *Summary
of Workshop on Electric Industry Restructuring* (Aug. 12, 1996) at 4. The rules fail to address these
concerns and instead endow the utility with this market power.

The rules require "written" customer approval before data is released and the utility can
charge for the customer's request for data. R1601(27), R1606.A and R1606.G(1). Commonwealth
urges that customers be given the right to orally authorize the release of data, subject to third-party
verification, as recommended previously. The first sentence of Rule 1606.G(1) should be rewritten
as follows: "Upon written authorization by the customer, A Load-Serving Entity shall release in a
timely and useful manner that customer's demand and energy data for the most recent 12-month
period to a customer-specified properly certificated Electric Service Provider."

While preparing for competition, the utility may have reviewed the data of some customers
and shared that data or contact list with its competitive affiliate or its employees who formerly
worked for the utility. If this has happened since December 26, 1996, the day the competitive rules
were initially adopted, those customer contracts should be declared void, that data should be shared
with ESPs, and the utility's affiliate should be charged for that data if the Commission retains this data
charge provision.

1 Power usage is recorded electronically by the utility. It has been computer-generated and
2 stored in preparing bills for many years. This power consumption data should be available on at least
3 a daily basis with 12 months of historic use. The utility plans on charging the customer for his data.
R1601.27.⁶ The Maine PUC directed its utility to transmit current data at no cost to competitive
4 electric providers, as part of its new rules on electric metering and billing.⁷ Commonwealth urges a
5 similar no-cost approach be adopted in Arizona.

6 **d. Uniform Transition Procedures Are Needed for All Utilities**

7 The Direct Access Service Request ("DASR") process must be uniformed for all utilities (and
8 UDCs) for converting over customers. Uniformity facilitates efficiencies in creating data templates
9 and eases the transition process. Access costs will be driven up if each utility has its own
10 requirements. If templates for each utility must be created for different fields of information,
11 enormous costs and time for customizing computer programs will be incurred. These high costs
12 may create a cost-prohibited barrier.

13 Metering and billing services should be available through the utility (or UDC). Uniform EDI
14 protocols on a statewide basis should be adopted to facilitate consistency for all customers and
15 providers, regardless of the location of service.

16 **e. New Meters Should Not be Required of Small Customers of 50 kW or Less**

17 Metering of electrical use by small customers should be continued with their existing systems.
18 Capital costs of time-of-use meters and the labor charges for their installation would place a
19 prohibited economic barrier for providers to serve small customers.

20 Meter data is not necessary for small and medium size customers.⁸ Hourly or interval
21 metering is required of loads of 20 kW (or 100,000 kWh) annually, under the rules.⁹ Many small
22 customers have loads greater than 20 kW. They are being denied access because of the high initial
23 capital cost of buying and installing new meters. Commonwealth urges that this load requirement be
24 raised to 50 kW, which would be consistent with the California program and is cost-effective in
25 capitalizing the cost of meters. Commonwealth recommends that 50 kW (or 250,000 kWh) be
26 substituted for 20kW (or 100,000 kWh) in Rule 1612.K(6) & (7).

27 For consistency, the utility (or UDC) should also be required to meet the same hourly
28 metering requirements as imposed on alternative providers. Assuming the load profiles are needed
by the utility (or UDC) in managing its distribution, then it is logical that this same information is
needed from those customers who decide not to switch. Furthermore, these profiles will be helpful
for those customers who later decide to seek alternative providers.

29 ⁶ This rule says the utility may set a tariff for Noncompetitive Service (R1606.D) which includes the
"provision of customer demand and energy data by an Affected Utility or Utility Distribution Company to Electric
Service Providers" (R1601.27). However, the ESP can only seek the customer's data upon the customer's
authorization. Thus, the customer will be charged directly or indirectly for his data.

30 ⁷ Maine P.U.C., *Docket No. 98-810* (March 15, 1999).

31 ⁸ The Commission's initial proposal set 1 Mw as the break between large and small customers, with the
large customers having to provide customer information of usage. Proposed Rule, *A. C. C. Docket No. 0000-94-165*
(Aug. 25, 1996).

32 ⁹ R14-2-1612.K(6). No reasoning is given for requiring hourly metering for loads over 20 kW but allowing
loads of 40 kW as the measure for aggregating customer loads for the phase-in under R14-2-1604.A (2).

1 A customer with more than 20 kW load (or 100,000 kWh annually) may use "predictable
2 load" profiling if that customer did not previously have an hourly meter. R1612.K(6). Even though
3 the rules provide that the utility or ESP may decide if the load is predictable, only the utility has that
4 data. Therefore, the utility controls the customer's and ESP's decision as whether that customer may
5 compete. For example, Arizona Public Service Company requires the customer's written consent
6 before APS will provide data to an ESP and only APS will make that determination if that customer
7 qualifies.¹⁰ The utility rate schedules should conform to these revised rules and oral authorization
8 subject to third party verification should be allowed for obtaining customer data.

9 Customers, at the election of the ESP, should be able to read their own meters as the rules
10 propose.

11 **f. The Utility Gets Paid but the ESP Is Vulnerable**

12 The inability to terminate service for nonpayment is an insurmountable barrier to competition.
13 The utility can stop the financial drain by a nonpaying customer; the ESP cannot. ESPs are then
14 required to demand at least three months' deposit or advance payment, giving the utility an excessive
15 competitive advantage.¹¹ However, the rules limit deposits to not more than two times the residential
16 customer's average monthly bill or 2½ times the nonresidential customer's maximum monthly bill.
17 R14-2-203.

18 No reasoning is given why ESPs are subjected to this unjustifiable treatment. One can only
19 conclude that the rules do not seriously invite competition, particularly for residential and small
20 commercial customers who may find themselves at higher financial risk and lack resources for large
21 deposits.

22 Commonwealth recommends the deletion of the opening sentences in rules, R14-2-211.B and
23 C, which prohibits termination of service for nonpayment. This discriminate treatment of ESPs is a
24 clear indication of the utility's efforts to keep competitors out of the Arizona market. Commonwealth
25 further urges that a nonpaying customer not be permitted to go back to the standard offer until its
26 payments to the utility (or UDC) and an alternative provider have been made in full or other
27 arrangements have been made. Customers should not be encouraged to "game" the system, and the
28 utility should not be "rewarded" if a customer decides not to pay – the utility is granted preferential
treatment and an entry barrier is created.

When the customer returns to the standard offer, the utility can increase the deposit. In
addition to the "non termination" barrier against ESPs, the utilities may further alarm customers not
to seek competitive services by claiming it may raise the deposit if they are dissatisfied with the
alternative provider. R14-2-203.B.9. This provision should also be deleted.

Commonwealth needs assurances that customer proceeds will be paid on a pro rata basis over
the aging of bills. If the utility receives its full or partial payment, and the power provider receives
nothing, the risk of entering the Arizona market is cost prohibitive and anti-competitive. As the rules
are now written, the power provider cannot stop service to a nonpaying customer, the utility would
be able to recover all or a portion of its distribution service cost, and the utility gets the customer
back. This framework is unworkable in creating a competitive electric market.

¹⁰ A.C.C. No. 5354, Schedule No. 10, at 4, *A.C.C. Docket No. E-01345A-98-0634*, Decision No. 61270
(Dec. 02, 1998).

¹¹ Assume power for January is read on Feb. 1, the bill goes out on Feb. 10 and is due Feb. 25. Assume
there is no effort to work with the customer and the bill is not paid. The rules requires at least 5 days notice to the
customer, and the customer cannot be switched back to the standard offer for at least 15 days before the next read date.
Power would be used until April 1, since the March 1 read has passed – 3 months. The ESP must pay for the
customer's use of power to the utility, until service is terminated.

1 **g. Billing Formats Should Compare “Apples to Apples” for Customer Shopping**
2 **Ease**

3 Under the monopolistic bundled rate, the utility sometimes separately charges customers for
4 capacity and energy. Capacity is measured in kilowatts and sold on a monthly basis. Energy is sold
5 by the hour and billed in mills or cents per kilowatt per hour. The rationale behind separate capacity
6 and energy charges is the customer who has generation load should be committed to pay for his
7 proportionate of capacity regardless of the number of hours he runs during the month. The utility
8 claims it recovers the investment in keeping up with the customer’s load. So the customer should
9 bear is portion of the fixed generation cost.

10 To the extent any fixed or capital investment relates to the distribution system, that portion
11 is a relatively small portion of the bundled rate. Furthermore, the customer, through line extension
12 advances, pays for the system expansion and extension, subject to all or partial reimbursement based
13 upon power usage. If the customer uses too little, he foregoes a portion of his advance to the
14 distribution company as payment for the distribution fixed costs.

15 All competitive services should be sold only on a kilowatt per hour basis. If the utility
16 includes a capacity charge, it is in essence imputing a fixed generation charge on top of its recovery
17 of stranded cost for generation. One must keep in mind that the capacity charge is largely allocated
18 to the fixed cost of generation. Under competition, generation is to be sold competitively and without
19 any capacity charge in any rate for any customer. The uneconomic excess capacity is already
20 recovered through the competitive transition charge.

21 By carrying over its historic, monopolistic rate structure, the utility makes it difficult for
22 customers to shop for generation. Customers cannot easily find their full cost in mills or cents per
23 kWh. The confused customer is inclined to stay with the utility or may go with its competitive
24 affiliate which has a similar rate structure. To avoid this anti-competitive effort, the utility should
25 either present all unbundled rates in mills or cents per kWh.

26 **h. The Utility Should Not Review and Audit Its Competitors’ Customer Lists**

27 A utility should not comment on its competitors. After all, the utility competes with the ESPs
28 through its standard offer and competitive affiliate. Consumers may not gravitate toward other
providers because of the untrue or unfavorable claims made by the LDC.

 Rule 1612.C says the utility has the right to review or audit “written authorizations” to assure
customer switches were proper. Only a disinterested party should review the conduct of electric
service providers. A utility with a pecuniary interest in the outcome should not be placed in that role.
The utility, whether or not it has a competitive affiliate, should not be required to simultaneously
create rules of conduct for ESPs and monitor their performance. This Trojan Horse strategy allows
the utility to penetrate the proprietary files of its competitors. Information, in short, that a provider
might think twice about handing over to a competitor who simply asks for it. It also allows the utility
access to its competitors’ employees. No confidentiality is required of the utility (or UDC) and even
if it were, it would be difficult to enforce. Furthermore, this conflict has the appearance of being an
unlawful delegation of the Commission’s oversight authority when it is transferred to a competitor’s
affiliate.

i. The Standard Offer Tariff Should Not Be Used to Deter Competition

 The incumbent utility retains the right to act as the default provider. R1606.A. If a customer
decides not to switch to an alternative provider, the utility will charge that customer its standard offer.
R1606.C. Commonwealth urges that the standard offer service tariff be cost-based using traditional
cost of service analysis, in determining: (a) must-run generating units, (b) distribution services, (c)
ancillary services, (d) metering services, (e) meter reading services, and (f) billing and collection
services. R1606.C.4. These same cost-bases should then be applied across the board when the utility

1 serves customers who seek competitive generation and elect to receive one or more of these other
2 services from the utility. If the utility charges a higher rate to alternative providers, the utility would
3 have a competitive advantage which would destroy the potential market.

4 A UDC should be prohibited from using its standard offer tariff to dampen or frustrate
5 competition. The Proposed Rule allows the UDC to offer special discounts, contracts or tariffs
6 "which prevents the customer from accessing a competitive option." R1606.C.6. This provision does
7 not resolve the problem. It is difficult to understand and may be impossible to prove. A customer
8 may have the competitive option but the discount, special deal or tariff allows the UDC to participate
9 in the competitive environment. The rule should state clearly that the UDC shall not offer any
10 discount, special contract or unique tariff to any particular customer. That is the venue of the
11 competitive marketplace, even for the UDC's competitive affiliate.

12 The UDC is also allowed to offer time-of-use rates, interruptible rates, or self-generation
13 deferral rates to competitive customers. R1606.C.6. Again, the UDC would be stepping over the
14 competitive line if it could internally shift the cost of service from one group of customers to
15 another.¹² The UDC would be competing with the "market rates" of alternative providers and with
16 alternative forms of generation. This framework retains the old monopolistic approach of the utility
17 in discouraging innovative market and generation approaches which might be proposed by
18 competitors. The UDC is envisioned as a "wires company" and it should not be a participant in the
19 marketing of competitive services under the cloak of standard offer service.

20 **j. ESPs Should Have the Option of Being the Provider of Last Resort for
21 Competitive Services**

22 Commonwealth does not simply cede the vast majority of customers to the incumbent.
23 Instead, Commonwealth suggests the Commission allow competitors to bid for these customers. By
24 relying on the incumbent's default cost-of-service rate, the incumbent will avoid the economic
25 discipline of the market. The incumbent may spiral back into the expanded rate base phenomenon
26 of the monopoly. It may be followed by another series of stranded cost challenges when customers
27 depart and the Commission is asked to revisit the utility's "buy versus build" decisions. All of this
28 could be avoided by adopting the bid mechanism adopted in Maine and under consideration in Ohio.

Electric service providers should have the opportunity to bid on services furnished to standard
offer customers. These customers should be "pooled" into economic units which would allow them
to reap the benefits of competition. The notion of the utility as the "provider of last resort" suggests
that the utility will retain its historic monopolistic means of providing service. Within this new
competitive environment, all consumers should, and could, have the benefits from market-based
services, rather than the old "cost-plus" framework.

k. Separation of the Utility's Competitive Assets from Regulated Assets Is Flawed

The utility is required to separate "competitive" generation assets and other Competitive
Services from it regulated business by January 1, 2001. The Commission will decide the "fair and
reasonable" value if those assets are transferred to the utility's affiliate. R1615.

All generation assets, except must-run units, should be sold at market value to third-parties
and not to the utility's affiliate unless it is the highest bidder. The rules do not define what is
"competitive" generation. If the intent is merely to exclude must-run units, the rules should state:

¹² UDCs must deliver competitive power and offer "distribution and distribution-related ancillary services
comparable to services they provide themselves at their Noncompetitive Service tariffed rates." R1606.F. By
allowing UDCs to negotiate deals with certain customers, cost-shifting would likely occur within or among standard
offer customers as well as between standard offer customers and those customers who purchase competitive generation
and UDC-distribution and ancillary services.

1 "All competitive generation assets, except Must-Run Generating Units, and Competitive Services
2 shall be separated from an Affected Utility prior to January 1, 2001."

3 Generation is a "Competitive Service" under the rules and it is to be sold at "market
4 determined rates" which are deemed just and reasonable. R1601(5) & R1611.A. Therefore, the sale
5 of the generation assets should likewise be sold using market values. Without this condition, the
6 utility will have the ability to manipulate their values and shift costs from the "generation side" to the
7 "regulated side," driving up the unbundled tariffs for competitors and lowering its competitive
8 generation price. By allowing the utility to set or negotiate a value with the Commission, outside of
9 a market framework, ESPs are being treated unfairly and under different rules than the utility and its
10 competitive affiliate. Furthermore, no Arizona utility should be able to bid on generation assets of
11 other Arizona utilities so as to avoid the market power claim.

12 **l. All Generation Should be Sold Competitively After January 1, 2001**

13 Only "investor-owned" UDCs are required to purchase generation through the "open market"
14 to serve standard offer customers, after January 1, 2001. R1606.B. All UDCs should acquire
15 generation through a competitive bid process, except for spot market purchases, starting in 2001.
16 No logical reason is given for excluding the distributive cooperatives from this requirement,
17 particularly since the previous rules allowed them to seek a waiver for good cause. By excluding
18 cooperatives from this provision, the Commission is in essence encouraging the extension or renewal
19 of long-term all requirement contracts between the distribution and generation cooperatives. This
20 is all contrary to the intent of making generation service competitive. As to the bid process (except
21 for spot market purchases), it would deter a utility from purchasing standard offer generation from
22 its corporate affiliate and claiming it is "through the open market." It would also avoid the affiliate-
23 utility relationship issues which are addressed below. If a robust generation market is desired, the bid
24 process should be retained as previously proposed.

25 **m. Utility-Affiliate Relations Must Be Monitored and Restricted**

26 Wholly-owned affiliates of a utility create another barrier to entry. The once-integrated
27 electric utility industry is evolving into several businesses: generation, transmission and distribution.
28 Generation is a commodity business. Transmission and distribution, the highway over which
electricity must flow, remains in large part a regulated business. All should operate as standalone
businesses. Functional unbundling of the utility's vertically integrated activities is a requisite to
tracking the costs of services offered to customers, both those who stay with the utility and those who
purchase services from others. A truly open market requires assurances of no cross-subsidization.

The previous rules allowed the utilities to separate their interests into transmission,
distribution and generation assets, enabling consumers and market participants to be protected.
Although the main benefit was to align costs to facilities, consumers and market participants would
also have the assurance of no self-dealing within the utility corporate structure.

**i. The Utility's Code of Conduct Should Not Displace Affiliate Transaction
Rules or Guidelines**

Perhaps the most lenient change, favoring the utility, is the Commission's delegation of
authority to the utility to propose its own code of conduct. R1616. By abandoning the previous rules
on affiliate transactions, the Commission is in essence endorsing anti-competitive affiliate transactions
until the utility decides it should come up with a code of conduct.

No opportunity is granted for consumers and alternative providers to comment on the utility's
proposed code of conduct. Nor is there any notice or hearing. This provision ignores due process
of the public.

Intracorporate transactions should be prohibited, except by using bidding procedures for
contracting purchases in which third parties would have the opportunity to participate. If the

1 transaction remains in the corporate "family" after the bid, it must be transparent with clear
2 accountability. A utility should be precluded from offering competitive services through an affiliate
3 until a code of conduct has been approved by the Commission, after notice, comment and hearing.

4 The code of conduct provision should include a complaint system. The utility could have 20
5 days to informally resolve complaints on its own, and failing that, it should be promptly referred to
6 the Commission for quick disposition. The Commission's remedial authority for serious or sustained
7 violations should include stiff penalties, notice to customers and public of the violation, and the
8 ordering of divestiture. At its call, the Commission should be able to choose an independent auditor
9 to review the utility's compliance, at the cost of the utility's investors.

10 Given an immature market, the Commission should err on the strict side. In particular, the
11 Commission should closely scrutinize cost and risk shifting, the prudence and purpose of utility
12 advertising, and the internal transfer of information and personnel. The bilateral transfer of customer
13 information, including consumption patterns, must be prohibited as well as any other dealing that
14 create an undue preference. Any personnel transfer should be a one-time event with the utility being
15 compensated for the human investment and a report of the transfers that have occurred since
16 December 26, 1996.

17 Anticompetitive behavior will occur unless the Commission is vigilant, as is evident in other
18 jurisdictions and competitive industries. The compelling forces of economic power will cause the
19 dominant utility to explore every avenue of competitive advantage. For these reasons, the
20 Commission's active intervention through these rule changes is needed.

21 ii. Affiliate Transaction Rules Should Apply

22 Affiliate transaction rules are necessary for promoting efficient competition. They should
23 promote simultaneous access to information, prevent ratepayer subsidization of the non regulated
24 affiliate activities, and preclude the exertion of collusive market power.

25 The lack of any wall between ratepayer-supported information and the competitive
26 environment within the utility creates a formidable barrier to entry. The same person may sit on the
27 board of a profit-driven affiliate and a ratepayer-protected company. Tight ties create clouds of
28 conflict and ambiguity as to who is actually speaking for whom. It is hard to separate entities. It is
harder to listen to companies telling you no special favors are given to their affiliates. Affiliate
relationships collide with the openness of competition. Affiliate relationships taint the ethics
suggested in the code of conduct.

The affiliate rules as previously proposed should be incorporated into the code of conduct,
at a minimum. Preferably, the Commission should readopt those affiliate rules as part of these electric
competition regulations. As an alternative, the attached Guidelines on affiliate transactions should
be incorporated within the codes of conduct of each utility.

iii. Treatment of ESPs Must Be Nondiscriminatory

The utility should treat its merchant affiliate on a par with other new entrants. This prohibition
against the preferential treatment of the utility's affiliate was deleted from the previous rules (prior
rule R1617.D). By indirectly endorsing this conduct, the utility may engage in unfair trade practices,
such as by offering special discounts or waivers and processing other ESP requests in a discriminatory
manner. Furthermore, the utility can share leads, solicit business, and marking information with its
competitive affiliate. Permitting these types of actions during this transition is clearly a restraint of
trade and anticompetitive.

iv. Use of a Similar Name or Logo Is Anti-Competitive

When a customer sees "APS" in the Diamondback ballpark, does he or she think of APS the
"wires" company or APS the energy supplier company? A utility should not be able to trade upon,

1 promote or advertise its affiliate's relationship with the utility. Nor should the utility be able to use
2 a similar name or logo to retain the monopolistic market share. A recent Nevada study concluded
3 that most customers tend to choose a power marketing affiliate whose name most closely resembles
4 that of their traditional utility. More than half of the customers surveyed believed the affiliate to be
5 the same organization.¹³

6 The use of a similar name or logo by the utility and its affiliate suggest to customers that they
7 are purchasing "local" power supplies that might be more reliable. Recognizing the regional flow of
8 electrons on the grid, this is deceptive. Furthermore, the suggestion of "buying locally" to the
9 detriment of out-of-state suppliers, by the joint use of a similar name or logo, is an attempt at
10 monopolization and may be a restraint of trade.

11 The prior rule (R1616.A.3) required a disclaimer if a similar name or logo were to be used
12 and now there is no prohibition against the utility and its merchant affiliate appearing the same.
13 California attempted to resolve this name similarity problem with a disclaimer stating the affiliate is
14 not the same company as the utility, and customers are not required to buy anything from the affiliate
15 to continue to receive services from the utility. However, few read the disclaimer and even fewer
16 understand it. As a consequence, no similar name or logo use is the only assurance that a
17 monopolizing attempt will not occur.

18 v. Divestiture Should Be Retained as an Option

19 The Commission should not abandon its attempt to divest the utility of generation.
20 Recognizing these cumulative market barriers, and the market power associated with generation sales
21 through the utility's competitive affiliate, make divestiture a vital component of electric restructuring
22 in Arizona. To force transactions out of the utility "family" and into the market is a requisite for cost
23 efficiencies to accrue to customers and for rivals to compete. Divestiture should seriously be
24 considered if there are major or repeated violations of the affiliate guidelines.

25 n. All Utilities, including All Public Power Entities and Cooperatives, Should Offer
26 the Benefits of Competition to Their Customers

27 All utilities, including municipalities, special districts and cooperatives, should offer power
28 cost savings to their customers through open competition. Some public power entities desire the
option to enter the private sector while retaining the benefits of publicly tax-supported benefits.
Federal hydropower is purchased below market rates and blended with other power sources so as to
undercut prices from "private sector" providers. The label should reflect how much power is being
derived from federal hydropower and sold in the competitive market.

The term "Public Power Entity" is undefined in the rules. R1610. Although this term was
used in the 1998 Arizona Legislation (A.R.S. section 30-801(16)), it is not cross-referenced in the
rules and it is unclear what actually is a public power entity.

4. UNBUNDLED TARIFFS, STRANDED COSTS AND GENERATION SHOPPING
CREDIT

¹³Public Utilities Fortnightly (Feb. 15, 1999) at 18.

a. Unbundled Tariffs Must be Swiftly Resolved

1 The unbundled tariffs should promptly be resolved, so that competition may start.¹⁴ Delivery
2 of electricity requires the impartial setting of unbundled rates. All customers must pay the same rate
3 regardless of power supply for the same services sought from the utility, if a competitive market is
4 to emerge. This objective cost-of-service standard requires the utility to become cost-conscious.
5 Otherwise, competitors will enter the field to provide more efficient services. If the utility is allowed
6 to cross-subsidize or arbitrarily allocate cost reductions to certain services, customers will pay for
7 those inefficiencies and alternative providers will be discouraged from competing.

8 Predatory pricing through incomplete or inappropriate cost allocations must be avoided. If
9 the utility's generation does not reflect its appropriate allocation of general and administrative costs
10 or if some generation costs are shifted to the regulated rate base, generation costs are lowered for the
11 utility's merchant affiliate. Thus, this predatory pricing is clearly threatening to competition.

12 Unsupported costs charged by the utility may be an unlawful restraint of trade. If the cost of
13 switching or interconnection is more than nominal, the utility is in essence creating a monopolistic
14 profit-center. By discouraging customers from accessing the competitive market, with fees paid to
15 the regulated utility, alternative providers are blocked in selling their services.

b. Stranded Costs Should be Resolved Promptly

16 Stranded costs will not occur until customers purchase generation from a non-utility source
17 and the forgone generation capacity is not marketable. Commonwealth opposes the "going forward"
18 approach of the net revenues lost approach and supports the divestiture "market" approach.

19 Commonwealth does not oppose the utility's reasonable opportunity to recover legitimate and
20 reasonable unmitigated stranded costs. However, Commonwealth objects to any "for profit" activity
21 to mitigate stranded costs because the utility is to be a "wires" company only. The utility should not
22 be using ratepayer revenues to create or operating a business that competes with ESPs.

23 As to the makeup of stranded costs, fossil plant depreciation may be too high which explains
24 why some facilities have sold at auction for more than book value.¹⁵ This excess has been paid by
25 ratepayers and should not be used by the utility to benefit the shareholders' for-profit, competitive
26 affiliate. Elimination of any return on equity with stranded cost is also a valid course of action. With
27 declining costs and interest rates, the ROE would naturally be reduced from historic rates anyway.
28 With the safer guaranteed payment of the competitive transition charge (CTC), further supports the
removal of the ROE. The utility still retains the option of divesting itself of the fossil generation plant
if the shareholders believe it might get a greater return through a sale.

c. Competitive Transition and Restructuring Costs Should Not be Allowed

A utility is entitled to recover its "competition implementation costs" from all customers as
part of stranded costs. R1601.35(d). This is in addition to any reasonable costs incurred as a result
of any divestiture. Competitors, however, are not entitled to charge the utility-investors for their
costs caused by impeded competition or in implementing the ESP process. By requiring the

¹⁴ Unbundling tariffs were first proposed to be filed by June 30, 1997 - almost two years ago. Proposed
Rule, A.C.C. Docket No. 0000-94-165 (Aug. 25, 1996).

¹⁵ James G. Campbell and Michael J. Majoros Jr., "What's 'Sunk' Ain't Stranded: Why Excessive Utility
Depreciation Is Avoidable," *Public Utilities Fortnightly* (Apr. 1, 1999) 34-39.

1 consumer, and not the utility-shareholder, to pay for the utility's venture into the competitive world
2 raises the CTC. It is anticompetitive and Commonwealth objects to the inclusion of any transition
3 or restructuring costs, other than those reasonable costs associated with the divestiture of generation.

4 **d. CTC Must Be Reasonable so as to Allow for Competition**

5 No customer should be made any worse off if he or she decides to purchase competitive
6 generation. In other words, each customer should receive the same line-item CTC regardless of
7 whether service is from the utility or an alternative provider. Recovery of any legitimate stranded
8 cost should be through a level CTC, so that all customers and providers will be able to plan for these
9 costs. Stability and predictability of the CTC allow an ESP to focus on cost-savings in providing its
10 services.

11 The CTC duration should be as short as possible while giving customers a significant
12 generation shopping credit. In California, the CTC must terminate by March 31, 2002 and San Diego
13 Gas & Electric recently filed a proposal with the California PUC to eliminate its CTC this July -
14 nearly 2 and one-half years ahead of schedule.

15 **e. Generation Shopping Credits Are Required in Order for Commonwealth to
16 Compete**

17 A generation "shopping credit" should be implemented so as to allow for the competitive sale
18 of energy. This credit would be computed by using the standard offer bundled rate, minus the
19 transmission, distribution, system benefits charge and other service charges, as unbundled. This will
20 reflect the actual generation price that the utility is charging its customers, which includes the
21 properly allocated overhead costs and return on investments to generation. By backing out the
22 generation credit from the other utility charges, it reflects the actual retail price from which the ESP
23 must compete.

24 This framework provides the only economic model in which Commonwealth would be willing
25 to compete in the Arizona market. As with other electric service providers, business decisions must
26 be made as to where power savings to consumers and reasonable profit opportunities might occur.
27 Other states, such as Pennsylvania and New Jersey, use this shopping credit, without switching fees,
28 so as to allow electric customers to participate immediately in the marketplace.¹⁶

The utilities should not be able to manipulate the shopping credit so as to squeeze new
entrants out of the market. For example, the shopping credit must be fixed for at least a 12-month
period, otherwise Commonwealth will incur costs of republishing its consumer education materials
and switching back-and-forth between the standard offer and shopping credit margin.

5. CONCLUSION

Commonwealth supports rules which create market competition, not utility-managed
competition. Commonwealth believes these recommended changes to these rules will foster actual
broad-based competition in Arizona. These recommendations are highlighted below:

- All customers must have prompt access to competitive markets.
- Oral third-party verification of customer transactions must be permitted.
- ESPs must have the ability to terminate service of a nonpaying customer.
- Uniform procedures for all utilities must be adopted.
- Barriers to entry must be removed.

¹⁶ New Jersey's Electric Discount and Energy Competition Act went into effect on Feb. 9, 1999 and it
recognizes shopping credits and prohibits switching fees for residential customers who change suppliers.

- Affiliate relation rules or the attached Guidelines must be in place (and applied retroactively) to address anticompetitive conduct and market power issues.
- Unbundled tariffs for distribution, meter reading, billing and collection charges must be nondiscriminatory and cost-based.
- CTC must be reasonable and predictable.
- Generation shopping credits must allow for competitors to sell low-cost power to customers.

Commonwealth appreciates this opportunity to comment on the rules. Please contact us if you would like additional information.

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GUIDELINES FOR AFFECTED UTILITIES AND THEIR COMPETITIVE AFFILIATES

1.0 Definitions

- 1.1 Affected Utility refers to the public service corporations defined in R14-2-1601.1 and the Utility Distribution Companies of the respective public service corporations defined in R14-2-1601.40.
- 1.2 Antitrust Laws are federal and state laws, including the Sherman Act, 15 U.S.C. §§ 1-7, the Clayton Act, 15 U.S.C. §§ 12-27, and Arizona Constitution, art. 14, § 15 and Arizona Revised Statutes § 44-1401 et seq. (Uniform State Antitrust Act), which are designed to protect trade and commerce from unlawful restraints, undue price discrimination, certain forms of concerted behavior such as price fixing, monopolization, and tying arrangements.
- 1.3 Commission refers to the Arizona Corporation Commission.
- 1.4 Competitive Affiliate with respect to an Affected Utility, refers to any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with the Affected Utility, that engages in the supplying, marketing, or brokering at retail any Competitive Services defined in R14-2-1601.5. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise.
- 1.5 Electric Service Provider refers to a company supplying, marketing, or brokering at retail any of the Competitive Services defined in R14-2-1604.14.
- 1.6 Employee refers to any officer, director, employee, consultant or agent of an Affected Utility.
- 1.7 Non-Affiliated Supplier refers to any company registered as an Electric Service Provider which is not a Competitive Affiliate.
- 1.8 Retail Electric Competition Rules refers to R14-2-1601 through R14-2-1617.
- 1.9 Standard Offer Service refers to Bundled Service offered by the Affected Utility or Utility Distribution Company as defined in R14-2-1601.34.
- 1.10 Unbundled Service refers to electric service elements provided and priced separately as defined in R14-2-1601.39.

2.0 Standards of Conduct.

- 2.1 **Equal Tariff Treatment:** An Affected Utility shall apply tariff provisions in the same manner to the same or similarly situated persons or entities if there is discretion in the application of the provision.
- 2.2 **Non-Discretionary Treatment:** An Affected Utility shall strictly enforce tariff provisions for which there is no discretion in the application of the provision.
- 2.3 **Non-Preferential Treatment:** An Affected Utility shall not, through a tariff provision or otherwise, give its Competitive Affiliate or customers of its Competitive Affiliate preference over Non-Affiliated Suppliers or its customers in matters relating to any product or service.
- 2.4 **Simultaneous Treatment:** All Unbundled Service products and services offered by the Affected Utility shall be simultaneously available to all customers and Non-Affiliated Suppliers on a comparable basis.
- 2.5 **Comparable Treatment:** Any discount, rebate or fee waiver for any product or service offered by the Affected Utility shall be simultaneously offered to all customers and Non-Affiliated Suppliers on a comparable basis.
- 2.6 **Transactions between Affected Utility and Its Competitive Affiliate:** An Affected Utility shall not sell or otherwise provide products or services to its Competitive Affiliate without making a sufficient offering to the market for the product or service. A Competitive Affiliate shall not sell or otherwise provide products or services to its Affected Utility without making a sufficient offering to the market for the product or service.
- 2.7 **Handling of Request:** An Affected Utility shall process all similar requests for a product, service or information in the same manner and within the same period of time.
- 2.8 **No Tying:** An Affected Utility shall not condition or tie the provision of any product, service or rate by the Affected Utility to the provision of any product, service or rate in which a Competitive Affiliate is involved.
- 2.9 **Information Processing:** An Affected Utility shall process all similar requests for information in the same manner and within the same period of time.
- 2.10 **Non-Disclosure of Customer Information:** An Affected Utility shall not provide information to a Competitive Affiliate without a specific request by the customer or the customer's agent, when information is made available to a Non-Affiliated Supplier upon the request of the customer or its agent. If there is a phase-in, customer applications to the Affected Utility shall be disclosed promptly and simultaneously to a Competitive Affiliate and Non-Affiliated Suppliers in a useful and meaningful manner.

- 2.11 **No Preferential Access to Information:** An Affected Utility shall not allow a Competitive Affiliate preferential access to any non-public information of the Affect Utility about the distribution system, its customers or the customers designated in a selection process (if any) that is not made available to Non-Affiliated Suppliers upon request. All employees of the Affected Utility will be instructed not to provide any non-public information to Competitive Affiliates regarding the distribution system and customers taking service from the Affected Utility that is not otherwise available to Non-Affiliated Suppliers upon request. The term "non-public information" means any customer specific information that was acquired by the Affected Utility in the course of serving customers or operating the distribution system and is not otherwise in the public domain.
- 2.12 **Market Information:** Employees of the Affected Utility are prohibited from sharing with Competitive Affiliates or any Non-Affiliated Supplier (1) market information acquired from the Competitive Affiliate or any Non-Affiliated Supplier, or (2) market information developed by the Affected Utility in the course of responding to requests for distribution service. The term "market information" means any information not otherwise in the public domain: (i) acquired by the Affected Utility in the course of responding to request for distribution service relating to the pricing of power and discounts offered by Competitive Affiliates or Non-Affiliates Suppliers to customers; (ii) about the identity of potential new customers that have contacted the Affected Utility about service needs; and/or (iii) about terms of service between customers and Competitive Affiliates or Non-Affiliated Supplies that are known by the Affected Utility to be confidential between a Competitive Affiliate or a Non-Affiliated Supplier and a customer and that were acquired by the Affected Utility in the course of responding to request for distribution service.
- 2.13 **Logs of Information Requests:** The Affected Utility shall keep a log of all requests for information made by the Competitive Affiliate and Non-Affiliated Suppliers and the date of the response to such requests. The log shall be subject to periodic review by the Commission.
- 2.14 **Proprietary Customer Information:** An Affected Utility shall not release any proprietary customer information without the prior written authorization of the customer or the customer's agent, except as may pertain to a selection process (if any). The Affected Utility shall have a duty to protect the confidentiality of proprietary information of its customers. The Affected Utility shall not share customer proprietary information in aggregate form with its Competitive Affiliate unless such aggregate information is available to Non-Affiliated Suppliers at the same time and under the same terms and conditions.
- 2.15 **No Appearance of Linkage between Affected Utility and Its Competitive Affiliate:** An Affected Utility (and its employees) shall refrain from giving any appearance of speaking on behalf of its Competitive Affiliate. The Affected Utility shall not represent that any advantage accrues to customers or others in the use of the Affected Utility's services as a result of that customer or others dealing with the Competitive Affiliate. If a customer requests information about Electric Service

Providers or other marketers, the Affected Utility shall provide a list of all Non-Affiliated Suppliers, including its Competitive Affiliate, but shall not promote its Competitive Affiliate or affiliate relationship. The list of Non-Affiliated Suppliers shall be in random sequence, and not in alphabetical order. The list shall be updated every thirty (30) days to reflect all currently registered Non-Affiliate Suppliers and to allow for a change in the random sequence. The Affected Utility shall not engage in joint advertising or marketing programs of any sort with its Competitive Affiliate or any Non-Affiliated Supplier, nor shall the Affected Utility promote or market any product or service offered by its Competitive Affiliate.

- 2.16 **No Opinion:** No employee of a Affected Utility shall state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, customer practices, or market share of any Competitive Affiliate or Non-Affiliated Supplier.
- 2.17 **No Representation of Advantageous Link:** A Competitive Affiliate shall not represent that any advantage accrues to customers or others in the use of the Affected Utility services as a result of that customer or others dealing with the Competitive Affiliate.
- 2.18 **Employees:** Employees of an Affected Utility shall not be shared with a Competitive Affiliate, and shall be physically separated from those of the Competitive Affiliate.
- 2.19 **Employment Exemption:** The Commission may approve an exemption from the separation requirements of Section 2.18 upon a showing by the Affected Utility that shared employees or facilities would be in the best interest of the ratepayer and have no anticompetitive effect, and the costs can be fully and accurately allocated between the Affected Utility and the Competitive Affiliate. The Commission shall allow a reasonable opportunity for parties to submit comments and conduct a hearing regarding any request for such an exemption. The Affected Utility shall fully and transparently allocate costs for any shared facilities or general and administrative support services provided to the Competitive Affiliate. Such exemption shall be valid until such time that the Commission determines that modification or removal of the exemption is appropriate.
- 2.20 **Separate Entities and Books:** An Affected Utility and its Competitive Affiliate shall be separate corporate entities with separate directors, officers, and management; and they shall keep separate books of accounts and records which shall be subject to review by the Commission.
- 2.21 **Dispute Resolution Procedure:** An Affected Utility shall establish and file with the Commission a dispute resolution procedure to address complaints alleging violations of these rules. Such procedure, at a minimum, shall designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was

received, including a description of any action taken and the complainant's right to file a complaint with the Commission if not satisfied with the results of the investigation.

- 2.22 **Complaint Log:** An Affected Utility shall maintain a log of all new, resolved and pending complaints. The log shall be subject to annual review by the Commission and shall include, at a minimum, the written statement of the complaint and the resolution of the complaint, or the reason why the complaint is still pending.
- 2.23 **Penalty for Violations:** Any willful violations of these rules shall result in a penalty that reflects the actual or potential injury to ratepayers and the willfulness of the violation.
- 2.24 **Non-immunity from Antitrust Laws:** Nothing in these rules shall be construed to confer immunity from state and federal Antitrust Laws or to detract from the Attorney General's prosecution of antitrust violations.
- 2.25 **Notice of These Rules and Reporting of Violations:** Copies of these rules shall be provided to every employee of an Affected Utility and be posted in a prominent place in every employee location. The Affected Utility shall report any violation of these rules to the Commission within seven (7) days of any such violation.

3.0 **Record Keeping and Accounting Guidelines**

- 3.1 **Existing Competitive Affiliate:** Any Affected Utility which has applied for or received approval of a Competitive Affiliate shall comply with these Guidelines. No later than June 30, 1999, such Affected Utility shall submit for Commission approval a plan which shall include the method for complying with these Guidelines, including the allocation of income, losses, costs and expenses between the Affected Utility and its Competitive Affiliate and any sale or transfer of any tangible or intangible asset to the Competitive Affiliate, by describing the asset, the significant terms and conditions of the sale and transfer, the cost basis and sale price or transfer value of the asset, and conditions pertaining to the sale or transfer. The Commission shall allow a reasonable opportunity for parties to submit comments and a hearing regarding the Affected Utility's plan.
- 3.2 **Plan for Creating Competitive Affiliate:** No later than June 30, 1999, an Affected Utility shall submit for Commission approval a plan describing its intentions in forming any new Competitive Affiliate and a description of the management, personnel, and property that may be transferred to the Competitive Affiliate, if an Affected Utility has created a Competitive Affiliate or intends to create a Competitive Affiliate before January 1, 2001. The plan shall include the method the Affected Utility intends to use in allocating the income, losses, costs and expenses between the Affected Utility and its Competitive Affiliate. If an Affected Utility intends to create a Competitive Affiliate after January 1, 2001, the Affected Utility shall promptly submit a plan as set forth in this Section. The Commission shall allow

a reasonable opportunity for parties to submit comments and a hearing regarding the Affected Utility's plan.

- 3.3 **Segregate of Facilities:** The plan described in Sections 3.1 and 3.2 shall include a detailed description as to how the Affected Utility shall segregate its operations, personnel and facilities, including, but not limited to, a description of the office facilities, telecommunication systems, cafeteria facilities, and parking facilities for the Affected Utility and its Competitive Affiliate.
- 3.4 **Employee Log and Costs Allocation:** Any employee who performs services for the benefit of the Competitive Affiliate, as may be authorized pursuant to Section 2.19, shall maintain an accurate and contemporaneous record of the time and activity devoted to the matters of the Competitive Affiliate. The Affected Utility shall be reimbursed monthly by the Competitive Affiliate for the proportionate share of the full cost of the employee, including his or her allocated portion of overhead and benefits charges.
- 3.5 **Employee Transfer:** If an employee contracts with or is or has been hired by the Competitive Affiliate of an Affected Utility, the Competitive Affiliate shall make a one-time payment to the Affected Utility an amount equal to 25 percent of the employee's base annual compensation. This payment shall be credited to an account which shall reduce the cost of services by the Affected Utility and the 25 percent factor is deemed to be equivalent of the cost of training the employee and it approximates the avoided cost of executive search services. The Affected Utility, its Competitive Affiliate and the employee shall agree that the employee shall not use any market information (as said term is defined in Section 2.12) acquired by the employee during his or her employment with the Affected Utility.
- 3.6 **Property Transfer:** Any transfer of patents, copyrights, computer programs and other intellectual property from the Affected Utility to its Competitive Affiliate shall be based on fair market value, using a single-cost price or royalty on future revenue derived from that property, or both, unless said transfer is made to a Non-Affiliated Supplier under Section 4.1. The aforescribed property shall not include market information, as described in Section 2.12, which shall not be subject to sale or transfer.

4.0 Reporting Requirements

- 4.1 **Sale, Transfer or Exchange of Assets:** An Affected Utility shall file a notice with the Commission of any prospective sale or transfer of any tangible or intangible asset to its Competitive Affiliate, and such notice shall be filed at least 60 days prior to the effective date of said sale or transfer. Each notice shall describe the asset, the significant terms and conditions of the sale or transfer, the cost basis and sale price or transfer value of the asset, and any financial terms and conditions pertaining to the sale or transfer. Any party may request a copy of sale or transfer notices from the Commission so that they may submit an offer to the Affected

Utility for the purchase of any tangible or intangible asset being offered for sale or transfer.

- 4.2 **Discounted Offers:** If an Affected Utility offers any discounted services or rates, prior to January 2, 2001, the Affected Utility shall file notice of such offer with the Commission within 24 hours of making such offer and such offer shall be made public. If an Affected Utility has offered any discounted services or rates since December 26, 1996 and the adoption of these Guidelines, the Affected Utility shall file notice thereof within 30 days after the adoption of these Guidelines. Non-Affiliated Suppliers shall be entitled to the same discounted service or rate within the Unbundled Service for the same class of customers.
- 4.3 **Monthly Transaction Reports:** Each month within 30 days of the expiration of the previous month, an Affected Utility shall file a report with the Commission, on a form acceptable to the Commission, describing all transactions and arrangements between the Affected Utility and its Competitive Affiliate. For each transaction or arrangement, the Affected Utility shall describe the nature of the transaction or arrangement, the date it occurred, the consideration involved, the cost basis used, and the method for determining the values or prices.
- 4.4 **Monthly Employee Report:** The monthly report of the Affected Utility, described in Section 4.3, shall include a list of the employees who performed services for the Competitive Affiliate (if authorized pursuant to Section 2.12), the amount of time devoted to particular activities of the Competitive Affiliate, and the allocated cost to and payments made by the Competitive Affiliate for such services.
- 4.5 **Monthly Employee Transfer Report:** The monthly report of the Affected Utility, described in Section 4.3, shall identify any of its non-clerical personnel who may have become an employee of its Competitive Affiliate. The report shall include the name of the employee, his or her job title and responsibilities with the Affected Utility, his or her most recent base annual compensation with the Affected Utility, his or her job title and responsibilities with the Competitive Affiliate, the date of employment with the Competitive Affiliate, the payment made pursuant to Section 3.5, and the execution of the agreement of confidential market information described in Section 3.5.

5.0 Audit Requirements

- 5.1 **Annual Audit:** Annually the Commission shall conduct an audit of the Affected Utility, at the cost of the shareholders of the Affected Utility, so as to verify the Affected Utility's compliance with the Standard of Conduct, the Record Keeping and Accounting Guidelines, and Reporting Requirements, all in accordance with the Antitrust Laws.
- 5.2 **Public Access:** Annual audit reports prepared by the Commission shall be made available to the public.



Douglas C. Nelson, P.C.

Attorney at Law
7000 North 16th Street
Suite 120-307
Phoenix, Arizona 85020

Telephone 602-395-1612

Facsimile 602-395-1943

May 13, 1999

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

Transmitted by Facsimile

*RE: Arizona Electric Competition Rules
Docket No. RE-00000C-94-0165
Technical and Implementation Workshops*

Dear Mr. Williamson:

On behalf of Commonwealth Energy Corporation, this is a response to the May 7, 1999 Procedural Order pertaining to requests for workshops on technical issues for implementing competition.

Commonwealth filed its application to intervene on April 29, 1999 and submits this response in hopeful anticipation that such application will be granted. Commonwealth recommends the formation of a consolidated workshop schedule to address unified procedures for all utilities to address the following matters:

- Direct Access Service Request (DASR) systems and customer contact
- Customer notification by utilities and consumers education by the Commission
- Meter reading process
- Bill format (and conformity to unbundled tariffs)
- Competitive Transition Charge (CTC) and the generation shopping credit
- Billing coordination process
- Billing collection and revenue process

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- Electronic Data Interchange (EDI) process
- Termination of service process (and financial exposure of electric service providers)
- Service acquisition agreements and their standardized terms and conditions for all utilities and ESPs
- Alternative dispute resolution process (between ESPs and utilities and between ESPs) during this transition period and after competition commences
- Utility and competitive affiliate relations and the Commission's monitoring process prior to adoption of codes of conduct and/or affiliate rules

Commonwealth encourages the Salt River Project (and any other public entity that allows open competition) to participate in these workshops so that one universal process may be used. This seamless access across territorial areas will economically facilitate open access for Arizona's customers.

Matters relating to the physical wheeling of power, such as those involving DesertSTAR, FERC, federal transmission and jurisdiction, and scheduling coordinators, should be directed to the Arizona Independent System Administrator and its forum.

Commonwealth urges the Commission staff to work on the pragmatic relationship among the customer, electric service provider and utility. These workshops are needed to sort out the working details in processing customer transactions.

Commonwealth looks forward to working with the Commission and its staff in implementing these uniform, simple and efficient procedures.

Sincerely,



Douglas C. Nelson, P.C.

DCN\vyg

c: Frederick M. Bloom, Chairman/CEO
Commonwealth Energy Corporation

Mr. Ray Williamson
May 13, 1999
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ORIGINAL and ten copies filed
this 14th day of May, 1999 with:

Docket Control Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPIES of the foregoing *hand-delivered*
this 14th day of May, 1999 to:

Jerry L. Rudibaugh, Chief Hearing Officer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Paul Bullis, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing *mailed*
this 14th day of May, 1999 to:

Copies also mailed to:
Electric Competition Service List - Docket No. RE-00000C-94-0165 (undated 5/03/99)

By *Venus Green*