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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. RE-00000C-94-0165

COMMONWEALTH'S RESPONSE TO COMMENTS TO THE RULES

Commonwealth Energy Services ("Commonwealth") submits this response to Comments made 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 urges the Commission to address these three key features:

- **Independent third-party verification** for switching of electric services.
- A clear "**generation shopping credit**" so that customers may easily compare competitive generation prices to the standard offer generation tariff.
- Reinstate the **affiliate rules** so as to avoid anticompetitive abuses in market power issues before the utility affiliates commence the sale of competitive services.

Commonwealth will address each of these 3 vital components of a competitive market, followed by responses to particular Comments.

Independent Third-Party Verification Gives Small Consumers an Opportunity to Participate

A simple, convenient means for selecting alternative providers is needed. Customers will not select competitive services if the process is cumbersome. The more steps required to change supplier, the less likely some one will take the time to switch. The Arizona Community Action Association claims that the Rules deny residential and low-income customers an adequate opportunity to participate. Instead of mandating a minimum residential customer requirement of all electric service providers, Commonwealth urges that the Rules be amended to encourage Electric Service Providers ("ESPs") to serve small users on a mass basis, with appropriate consumer protection. Commonwealth proposes the following additions to the Rules.

New Rule 1612.C.[1] No Affected Utility or Electric Service Provider shall make any change or authorize a different Electric Service Provider until one of the following means of confirming the change has been completed.

1. Independent third-party telephone verification.
2. Receipt of a written confirmation received in the mail from the consumer after the consumer has received an information packet confirming the telephone agreement.
3. The customer signs a document fully explaining the nature and effect of the change of the service.
4. The customer's consent is obtained through an electronic means, including but not limited to, computer transactions.

For residential customers, no change in the Affected Utility or Electric Service Provider may be made until the change has been confirmed by an independent third-party verification company as follows:

1. The third-party verification company shall meet each of the following criteria:

(a) Be independent from the entity that seeks to provide the service.

(b) Not be directly or indirectly managed, controlled, or directed or owned wholly or in part, by an entity that seeks to provide a new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5% of the entity.

(c) Operate from facilities physically separate from those of the entity that seeks to provide the new service.

(d) Not derive commissions or compensation based upon the number of sales confirmed.

2. The entity seeking to verify the sale shall do so by connecting the resident by telephone to the third-party verification company to confirm the sale.

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[1]A.A.C. R14-2-1601 *et seq.* are referenced here only by the Section numbers.

3. The third-party verification company shall contain the resident's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the resident upon request. Information obtained from the Electric Service Provider through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved resident against the entity or its employees who are responsible for the violation.

4. Notwithstanding paragraphs (1), (2) and (3), an Electric Service Provider shall not be required to comply with these provisions when the customer directly calls the Electric Service Provider to make changes in Competitive Services. However, an Electric Service Provider shall not avoid the verification requirements by asking a customer to contact the Electric Service Provider directly to make any change in the Electric Service Provider. An Electric Service Provider shall be required to comply with these verification requirements for its own competitive services. An Electric Service Provider shall not be required to perform any verification requirements for any change solicited by another Electric Service Provider.

The above recommendation is taken from the California experience which has proven reliable and protects consumers. Commonwealth made these following recommendations in its earlier Comments.

Amended Rule 1612.C (now 1612.D after re-lettering). No consumer shall be deemed to have changed providers of any service authorized in this Article (including changes from the Affected Utility to another provider) without written <u>or third-party oral verified</u> authorization by the consumer for service from the new provider. If a consumer is switched to a different ("new") provider without such ~~written~~ authorization, the new provider shall cause

service by the previous provider to be resumed and the new provider shall bear all costs associated with switching the consumer back to the previous provider. ~~A Utility Distribution Company has the right to review or audit written authorizations to assure a customer switch was properly authorized.~~ An ~~written~~ authorization that is obtained by deceit or deceptive practices shall not be deemed a valid ~~written~~ authorization. Electric Service Providers shall submit reports within 30 days of the end of each calendar quarter to the Commission itemizing the direct complaint filed by customer who have had their Electric Service Provider changed without authorization. Violations of the Commission's rules concerning unauthorized changes of providers may result in penalties, or suspension or revocation of the provider's certificate.

The ESP is required to submit the consumer information label, disclosure report, and service terms before processing a "written" authorization from a customer having a load of less than one megawatt before switching, under **Rule 1617.G(2)**. This is required even though the customer will have 3 days in which to rescind after it has received the label, disclosure information, and terms of the agreement. If a customer rescinds, the ESP will of course not complete the switch. Consequently, the following subsection should be deleted:

Delete Rule 1617.G(2). ~~Prior to processing written authorization from a retail customer with a load of less than 1 MW to change Electric Service Provider.~~

This third-party independent verification process has worked well in California. As New West Energy pointed out, ESPs are discouraged from competing for residential customers unless they have an opportunity to serve more than 30,000 customers (at 8). Expecting someone to walk door-to-door or to pay the high cost of direct mailing will effectively leave residential and small business customers out of the competitive services market – unless the third-party verification approach is adopted.

Generation Shopping Credit Must Be Properly Calculated and Clearly Identified on the Bill

The Rules contemplate the use of a "generation shopping credit." Customers are granted the opportunity to purchase competitive generation. In order to make that choice, the generation tariff in the standard offer must be clearly illustrated for comparison to the "generation shopping credit" on the bill for those customers seeking competitive services.

The Land and Water Fund of Rockies and The Grand Canyon Trust (collectively referred to as "the Land & Water Fund") presented Comments on the comparison of offers. Commonwealth supports the Fund's position that the Rules should require a clear comparison for consumers, with the same billing components for all utilities.

Trico Electric Cooperative, Inc. suggests that it should not have to unbundle it generation and transmission costs because it buys both from AEPCO. Commonwealth opposes Trico's proposal for the reason it denies potential customers and competitors from easily calculating the "generation shopping credit."

Arizona Public Service Company ("APS") makes the shocking comment that its Standard Offer components are "unlikely" to "match the corresponding unbundled *rates* actually paid by those who receive portions of their electric service from competitive suppliers." (at 5). This is disturbing. It underscores the need for the Commission, consumers and competitors to compare the charges to Standard Offer and competitive customers. This is needed to assure the public of no cross-subsidization and so customers can clearly determine their "generation shopping credit." Commonwealth of course opposes APS's suggestion that **Rule 1606.C** delete the cost components of the Standard Offer. Commonwealth vigorously opposes APS's idea that the utility retain the option of developing its own unbundling and billing plan for the reason that a unified billing format should be available to all customers in all service areas.

In responding to these Comments, Commonwealth urges that a definition in the Rules should refer to a "Generation Shopping Credit." Commonwealth proposes the following language:

> **New Rule 1601(17)**. "Generation Shopping Credit" means the bill credit that will be afforded to each customer of an Affected Utility that chooses to purchase its electric generation service from an entity other than the Affected Utility that provides its distribution service.

The following section should be added:

> **New Rule 1606.C(3).** Simultaneously with the start date for the implementation of retail choice, each Affected Utility shall provide a Generation Shopping Credit on the bill of each retail customer of an Affected Utility that chooses to purchase its electric generation service from an entity other than the Affected Utility that provides its distribution service. The Generation Shopping Credit shall be based on the Affected Utility's full cost to provide retail electric generation service to each customer class, including but not limited to the cost of energy, capacity, ancillary services, Must-Run Generating Units, all relevant taxes, reserves, transmission service (or the applicable independent system administrator or independent systems operator), marketing, administration and general costs, and the applicable rate of return on the energy, capacity, ancillary services, reserves, Must-Run Generating Units, marketing, administrative and general costs. The Commission shall determine the appropriate level of Generation Shopping Credits for each Affected Utility.

The Standard Offer provision and the billing element section, **Rule 1606.C(2)(a)(1)** and **Rule 1612.N(1)(a),** respectively, should likewise be amended to read: "Generation Shopping Credit." Must-Run Generating Units should be deleted from **Rule 1606.C(2)(a)(3)** as that cost component should be part of the Generating Shopping Credit.

Staff commented on the description of "generation" under the Standard Offer and billing provisions (at 7 & 8). Staff suggest that ancillary service costs be allocated between generation and delivery services. It is unclear what is meant by "variable" ancillary services, which are a part of generation costs, and "fixed" ancillary services, which are included in delivery costs. All ancillary services relating to generation, both variable and fixed, should be included in the computation of the Generation Shopping Credit. The hazy distinction between a fixed and variable ancillary service should not be a pathway for cost shifting from generation to delivery charges which are paid by all customers. Commonwealth recommends that all ancillary services be included in both the Standard Offer tariff provision, **Rule 1606.C(2),** under Generation Shopping Credit, and the Billing provision, **Rule 1612.N,** under the Generation Shopping Credit.

Affiliate Rules Should Be Reinstated

The affiliate rules should be reinstated. Commonwealth concurs with the Comments made by Enron Corp., Arizonans for Electric Choice and Competition, and the City of Tucson.

Related to these affiliate concerns is whether the utility (or its "wires" affiliate) may compete in providing electric services. APS proposes that it should be able to offer special discounts or contracts through its Standard Offer tariff under **Rule 1606.C(6)** (at pages 3 & 4). Competitors will have to pay unbundled tariffs for services. However, those rates might remain elevated if the utility is giving discounts or special deals to certain customers. APS would have a competitive advantage by cost-shifting and subsidizing its "generation" deals with selected customers.

In reference to the separation of monopoly and competitive services, **Rule 1615,** APS proposes that its regulated utility be able to offer non-generation competitive services through the "wires" distribution company and "some" competitive generation services (at 7 & 8). Perhaps APS is over-reaching in making these requests in the hope that the Commission will settle on letting APS design and enforce its own code of conduct. These intentions of APS should alarm the Commission. Commonwealth opposes the utility (or UDC) offering any competitive services as outlined in APS's Comments. Tucson Electric Power Company ("TEP") requests that this separation deadline be extended to 2003 and it have the option to transfer competitive services to a subsidiary (at 6). The Commission should reject these efforts by APS and TEP to undermine the competitive environment, it should reinstate the divestiture preference, and it should reinstate the affiliate rules.

Tucson's "Flash Cut" Proposal Is Supported by Commonwealth with a Fixed Date

The City of Tucson articulates the difficulty it had in addressing the minimum power use requirements and moving towards soliciting competitive services, under **Rule 1604.** This confusion is also prevalent among small industrial and business customers and residential users. AEPCO and the Duncan and Graham distribution cooperatives expressed concerns over the "checkerboard" pattern of implementing competition if the start date varies for each utility's service area, under **Rule 1602.** New West Energy points out the market distortions caused by the customer load and aggregation rules, particularly to the economic disadvantage of smaller customers and residential customers.

Commonwealth supports Tucson's recommendation of a "flash cut" in which all customers may purchase competitive electric services and a date certain should be set for opening all territories for competition, such as September 1, 1999. By setting a firm date, all parties will have an incentive to complete the transition process and all customers and competitors will be able to plan for their futures. Commonwealth, of course, opposes the recommendations of TEP which raise the bar for smaller customers before they may compete.

Disclosure of the Generation Source of Power Provide Choice to Environmentally-Sensitive Customers

The Land & Water Fund and Tucson support the disclosure of the generations sources of power, which was in **Rule 1617**. Commonwealth markets green power to residential customers in California through its "GreenSmart" program and with communities such as the Santa Monica, California . Commonwealth has found that many customers desire the option to purchase generation from environmentally-compatible sources. Commonwealth supports the disclosure requirements and urges that it be reinstated in the Rules.

Competitive Services Are Properly Defined in the Rules

APS wants the Commission to turn upside down the definition of "competitive services" in **Rule 1601(5)**. The essence of the Rules is to deregulate the electric industry by making all services competitive except specific regulated activities, such as distribution, standard offer, transmission (and its related ancillary services), must-run units, customer data, and metering service. This is a clear and proper definition, otherwise the magnetic powers of the monopoly might narrow the competitive environment if all other energy-related services starts as being Commission-regulated unless the Rules are amended. Commonwealth opposes the change suggested by APS.

Service Acquisition Agreements Should Be Standardized

New West Energy said based upon its California experience, limited governmental involvement in market entry is sufficient. New West Energy recommends that the Electric Service Provider Acquisition Agreement be a standardized Commissioned-approved document specific for each utility (at 2). As Commonwealth commented previously, it desires uniformity in the documents and processes across all service areas. Having a simplified common system for all consumers helps in educating customers. They will not have to relearn new terminology or procedures if they relocate

to other areas of Arizona. Likewise a standardized agreement for all service areas reduces transaction costs. Thus, Commonwealth supports the unified approach of a Commission pre-approved agreement for all service areas. Furthermore, Commonwealth endorses New West Energy's recommendations regarding CC&N applications.

Generation Should Be Sold Competitively, Not Through Discounts or Special Tariffs of the "Wires" Company

Staff proposes that the "wires" utility be able to offer "economic development tariffs" in addition to special contract discounts (at 2 & 5). Staff proposes adding that term as a definition. This merges the "wires" business with the "generation" business. It retains the monopoly configuration of a monopoly utility seeking to direct economic growth in Arizona. Competitive marketers could be the impetus behind economic development if the Rules allow for new entrants to compete. As mentioned previously, Commonwealth opposes utility generation discounts or any other special deals that drive up distribution charges for all customers.

Interim Regulation of Power Contracts Would Not Be Needed With A Flash-Cut and Open Access for All Customers

The City of Tucson and Trico expressed concerns over the "competitively negotiated contracts" "customized to individual customers" prior to January 1, 2001, as set forth in **Rule 1611.C.** This provision appears to allow for a "cherry-picking" season for the utilities. Only contracts of one megawatt or more and for one year or more need to be filed with the Utilities Director. Nothing is said about what the Utilities Director or the Commission may do with these large power contracts. What is a customized customer contract? What happens to small "customized" contracts before January 1, 2001? The purpose of this Rule 1611 is to prevent large preferential customers from obtaining disproportionate savings from competition. These issue would be avoided by using a "flash cut" and allowing small customers to enter the market through the third-party verification process.

Aggregation of Small Users Should Be Encouraged

The Rules inhibit small electric customers from working together. The Rules discriminate against small customers who do not meet minimum load levels (or hourly meters). Commonwealth supports the recommendations of the Land & Water Fund and Tucson in that aggregation should be encouraged under the Rules.

Customers Should Be Able to Give Their Electric Data to Anyone Without Cost

New West Energy says the customer owns the data (at 9), and Commonwealth concurs. ESPs should not have to pay the utility for that data when the customer requests its release. The utility is already collecting that data as part of its regulated distribution charge. The definition of "Noncompetitive Services," in **Rule 1601(27)** should be amended with the deletion of "provision of customer demand and energy data by an Affected Utility or Utility Distribution Company to Electric Service Provider" so that the utility cannot impose a charge on these services. Or, the Rules should provide that the data will be provided to the customer (or its authorized representative) at no charge.

Solar Portfolio Standard and the Renewable Portfolio Standard

The Land & Water Fund and the City of Tucson support the solar portfolio standard which was deleted under the **former Rule 1609.** As mentioned previously, Commonwealth is aggressively marketing "green power" sources. Commonwealth is pleased that the Commission has considered the environmental aspects of generation and encourages the Commission to broadly include all renewable sources, including geothermal steam generation.

Potentially Strandable Assets Do Not Include Non-competitive Distribution Assets

Trico Electric Cooperative, Inc. suggests that stranded costs include distribution assets (at page 1 & 3). The essence of a potentially strandable asset is that the utility had a "regulatory contract" as a monopoly and that the transition to competition made an asset uneconomical in the competitive environment. Trico's suggestion should be rejected for two reasons. First, the Arizona Court of Appeals recently held that the relationship between the Commission and the utility is not contractual. There is no regulatory contract between the utility and the State. *U.S. West Communications, Inc. v. Arizona Corporation Commission* (1CA-CV 97-0517, filed May 18, 1999). Second, distribution assets will remain with the utility under its original monopoly-regulated tariff and, therefore, no asset may become "stranded" by virtue of competition.

Navopache and Mohave electric cooperatives ask that the competitive transition charge include the cost of changing its billing and accounting systems and any excess unused meters. Commonwealth opposes the inclusion of any transition costs in the CTC definition, **Rule 1601(4)**. Inventory controls and the sale of excess meters are ways to mitigate these management problems. Competitors incur major costs in developing computer systems to electronically handle competition.

Likewise, the utility should be obligated to incur relatively minor costs in upgrading its billing and accounting systems.

System Benefits Charges Should Not Include Strandable Assets or Competitive-Type Services

TEP suggests that both nuclear and "non-nuclear" decommissioning costs be recovered through system benefits charges, by amending **Rule 1601(36)**. Commonwealth opposes the padding of these charges with generation decommissioning costs. Furthermore, competitive demand side management programs and other elective programs should be deleted from that definition. System benefits charges should be left for the truly needy and not a subsidy for the utility to compete.

ESPs Should Have the Opportunity to Determine the Adequacy of Load Profiling

Customers are discouraged from seeking competitive generation because they must have hourly meters or a load profile, if they use over 20 kilowatts or 100,000 kWhs annually, under **Rule 1612.K(6)**. TEP opposes the use of any load profiling (at 4 & 5). APS suggests that it as the "developer" of the customer's load profile should decide if that customer's load is predictable (at 7). Staff supports this same change (at page 7). Commonwealth opposes this additional barrier and supports keeping the original language. Any electric service provider should be able to make its independent determination of whether or not that customer has a load it desires to serve. As Commonwealth stated in its Comments, new hourly meters should not be required of small customers of 50 kw or less (or 250,000 kWh per annum). Furthermore, the utility should be required to impose those same metering requirements on its Standard Offer customers if such information is truly needed for operating the distribution system.

Transmission Access Must Be Made Available for All Distribution Customers

Trico suggests that transmission capacity be made only available to its Standard Offer customers in **Rule 1609.B** (at page 3). APS suggests that this section be deleted (at pages 5 & 6). Customers who purchase competitive generation will use the same transmission line to the utility as before. To deny that open access, those consumers who seek competitive generation will be discriminated against and another barrier to competitor entry will be created. Commonwealth opposes the Trico and APS recommendations and supports the amendment proposed by Staff (at page 5).

Distribution Cooperatives Should Be Encouraged to Allow for Competition

AEPCO, and the Trico, Duncan and Graham distribution cooperatives desire to sell competitive services within their territories without being subject to the separation of generation assets (the distributive cooperatives have an all-requirements contract with AEPCO) and competitive service activity, under **Rule 1615.C** (at page 5). Trico does not want to separate its AEPCO's generation and transmission charges, as discussed previously. As with other Affected Utilities, the distribution cooperatives should be required to separate out the "generation shopping credit" and if its AEPCO generation is sold back to the distribution cooperative, it should be sold under the Standard Offer tariff.

Navopache/Mohave wants all metering, meter ownership, meter reading, billing, collections and information service to remain a regulated monopoly for the distribution cooperatives. Carving out this exception to the Rules, along with the ability to sell competitive generation to its Standard Offer customers, would exclude cooperative customers from competition. Commonwealth believes all customers in all sectors of Arizona should have choice.

Commonwealth supports the Staff's recommendation that electric cooperatives be required to submit a code of conduct for Commission approval if the cooperative intends to provide competitive services. The amended change to **Rule 1616**, as proposed by Staff should also encompass the sale of competitive services "through the electric cooperative or its affiliate," particularly recognizing that the cooperatives are creating a separate marketing entity, Sierra Southwest Electric Power Cooperative Services, Inc. In addition to supporting the Staff's recommendation, Commonwealth further urges that the affiliate rules be reinstated.

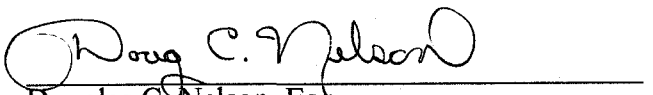
Closing Remarks

Commonwealth has not responded to all Comments and no inference should be made as to Commonwealth's position as to those that were not addressed here.

In conclusion, Commonwealth urges the Commission to adopt these recommendations, particularly as to a) third-party verification process, b) generation shopping credit, and c) the affiliate rules.

RESPECTFULLY SUBMITTED this 4th day of June 1999.

DOUGLAS C. NELSON, P.C.



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