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DOCUMENT CONTROL

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

DOCKET No. RE-00000-C-94-165

Arizona Corporation Commission

DOCKETED

JUN 04 1999

DOCKETED BY

**ASARCO INCORPORATED, CYPRUS CLIMAX METALS
COMPANY, ENRON CORP. AND ARIZONANS FOR ELECTRIC
CHOICE AND COMPETITION'S RESPONSE TO WRITTEN COMMENTS
ON PROPOSED ELECTRIC COMPETITION RULES
ISSUED IN DECISION NO. 61634**

June 4, 1999

Submitted by:
FENNEMORE CRAIG
Attorneys for ASARCO Incorporated, Cyprus
Climax Metals Company, Enron Corp. and
Arizonans for Electric Choice and
Competition

1 Pursuant to the Chief Hearing Officer's Procedural Order dated April 21, 1999, ASARCO,
2 Incorporated, Cyprus Climax Metals Company, Enron Corp. and Arizonans for Electric Choice and
3 Competition (collectively "AECC") hereby file their responses to the written comments regarding
4 the proposed Electric Competition Rules (the "Rules") issued in Decision No. 61634 on April 14,
5 1999 filed by the various parties to these proceedings. AECC has addressed only those comments
6 which are of the greatest significance. AECC's silence in response to the remaining comments
7 filed by the other stakeholders should not be viewed as AECC's objection or support.

8 **AECC's Response to Staff's Comments Regarding Proposed Rules ("Staff Comments")**

- 9
- 10 • Economic Development Tariffs (Staff Comments at p. 2, ls. 12-19; p. 4, l. 25- p.5,
11 l. 5)

12 Staff proposes inclusion of a definition of Economic Development Tariffs in the rules.
13 From the outset, AECC wishes to notes its agreement with APS regarding deletion of the
14 restrictions on special contracts after January 2, 2001 set forth in R14-2-1606(C)(6). However,
15 should the Commission choose to retain this provision of the Rules, AECC urges the
16 Commission to broaden the definition of Economic Development Tariff to include not only
17 discounted tariffs to attract new businesses to Arizona or encourage business expansion, but to
18 provide discounted tariffs to businesses for whom a discounted tariff would provide an economic
19 benefit that would be in the public interest and ensure the continued availability of jobs for
20 Arizona citizens. Absent such additional provisions, the current definition of Economic
21 Development Tariff proposed by Staff could be read to prohibit Economic Development Tariffs
22 by electric utilities unless such tariffs are used to attract new businesses or encourage business
23 expansions.

- 24 • Code of Conduct (Staff Comments at p. 9, l. 23 - p. 10, l. 11)

25 Staff proposes additional language to R14-2-1616 that will have the effect of requiring
26 electric cooperatives that plan to offer competitive services to submit a code of conduct to
prevent any type of anti-competitive activities. While AECC believes that electric cooperatives

1 should be subject to the same code of conduct and affiliate transaction requirements as all other
2 Affected Utilities, AECC reiterates its concern that the Commission's provisions regarding codes
3 of conduct do not provide adequate protection to the public. Instead, as set forth in AECC's
4 written Comments on Electric Competition Rules as well as the separate comments of Enron
5 Corp., the Rules must be amended to reinstate the affiliate transaction restrictions previously
6 contained in the Rules. Without affirmative restrictions on affiliate transactions of Affected
7 Utilities, there remains a serious risk that existing market power will be misused. Therefore,
8 AECC agrees with Staff that electric cooperatives be included in the code of conduct
9 requirements but also asserts that the cooperatives should also be subject to the reinstated
10 affiliate transaction restrictions.

11 **AECC's Response to Comments of Arizona Public Service Company on the Proposed**
12 **Electric Competition Rules ("APS Comments")**

13 • Definition of Competitive Services (APS Comments at p. 1, l. 22- p. 2, l. 19)

14 APS asserts that the Commission should not define "competitive services" simply by
15 negative reference to the definition of noncompetitive services. APS is wrong. The overriding
16 goal of competition is to ensure that Arizona's electric consumers benefit from the introduction
17 of competition in a restructured electric industry. All electric utility related services that can be
18 competitive should be competitive. In this way, consumers receive the widest range of benefits
19 possible. APS's proposal would limit competitive services allowing Affected Utilities to argue
20 that only the few specifically identified services are entitled to be competitive. The rules
21 governing competition should not be so restrictive.

22 • Provider of Last Resort (APS Comments at p. 3, ls. 7-18)

23 In the event the provision of provider of last resort services is expanded to customers
24 using over 100,000 kWh per year, AECC submits that it should be at the option of the customer
25 not at the option of the UDC, as APS suggests, with only customers purchasing such service
26 bearing the cost. In addition, AECC submits that all providers of Last Resort service should be

1 required to obtain electric power for this service from the marketplace through a competitive
2 bidding process.

- 3 • Special Contracts (APS Comments at p. 3, l. 20- p. 4, l. 17)

4 As stated above, AECC agrees with APS that the Commission should delete the
5 prohibition on special discounts or contracts set forth in R14-2-1606(C)(6) for the same reasons
6 AECC urges the Commission to broaden Staff's proposed inclusion of an Economic
7 Development Tariff in the Rules. Providers of electric utility services should be allowed to use
8 special discounts or contracts with term not only to attract new businesses or encourage business
9 expansion, but to allow business customers to remain in business in Arizona providing jobs,
10 revenues from taxes and royalties and other ancillary economic benefits to the State as a whole.
11 In many cases, Arizona businesses need to reduce their operating costs to continue to do business
12 in Arizona. Special contracts provide a flexible mechanism by which such customers can seek
13 to reduce their power costs and thereby continue in business in Arizona.

- 14 • Standard Offer Tariffs (APS Comments at p. 4, l. 19- p. 5, l. 12)

15 AECC strongly opposes APS's recommendation that the Rules be revised to allow UDCs
16 or Affected Utilities to submit alternative plans regarding unbundling and billing. In short, APS
17 seeks freedom to do their own billing in their own manner. However, competition demands that
18 customers have the opportunity to evaluate available services by comparing unbundled tariffs
19 and billing formats. Uniformity is required. If APS or any of the Affected Utilities are allowed
20 to design their own unbundled tariff format or billing format, there is a significant risk that
21 consumers will not be able to conduct intelligent comparisons of available services and may
22 thereby be denied the benefits competition has to offer.

- 23 • Transmission and Distribution Access (APS Comments at p. 5, l. 14- p. 7, l. 8)

24 Again, AECC supports Staff's recommended revision to Section R14-2-1609(B) as
25 Staff's recommendation will ensure the availability of adequate transmission and distribution
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1 capability to all consumers in the State. APS's proposed change would undermine the very
2 assurance that Staff's recommendation seeks and therefore should be rejected.

3 AECC also opposes APS's recommendation that the Rules be amended to alter the
4 AISA's responsibility with regard to ATC calculation for Arizona transmission facilities. APS
5 asserts that the AISA may not have sufficient staff to actually perform detailed calculations for
6 ATC. AECC agrees that a staff of such size will not be in place during the start-up phase of the
7 AISA, and may not be needed if Desert STAR is implemented in a timely fashion. However,
8 AECC believes that the Commission's proposed language gives the AISA Board the latitude to
9 determine if "verification" of the ATC calculation is an appropriate transition strategy. If Desert
10 STAR is delayed, or does not come into being, the AISA can proceed to become more directly
11 involved in performing the calculation.

12 • Separation of Competitive Services (APS Comments at p. 7, l. 18- p. 8, l. 7)

13 AECC strenuously objects to APS's continued efforts to avoid any obligation to separate
14 the provision of all competitive services between Affected Utilities and their affiliates. Contrary
15 to APS's statements, requiring separation between affiliated and Affected Utilities will stimulate
16 competition, result in lower prices for Arizona consumers and minimizes the risk of market
17 power abuse. APS's concerns over loss of economies of scale are far outweighed by these
18 benefits. R14-2-1615 must remain unchanged and must mandate complete separations between
19 Affected Utilities and their affiliates with respect to competitive services.

20 • Disclosure of Information (APS Comments at p. 8, ls. 9-18)

21 AECC submits that the rules provisions regarding disclosure of information are
22 unnecessary. Consumers desiring information about pricing, resources portfolios, and terms of
23 service can request such information from their electric service providers. Nevertheless, to the
24 extent that these disclosure of information requirements are to be retained in the rules, AECC
25 submits that APS's recommended change should be rejected. If there are to be requirements in
26 the Rules governing disclosure of information, such requirements should apply to all Load

1 Serving Entities not just Load Serving ESPs marketing to new customers. There is no reason to
2 obligate certain providers to such requirements and not others.

3 **AECC's Response to TEP's Comments on the Proposed Amendments to the Electric**
4 **Competition Rules ("TEP Comments")**

- 5 • Definitions (TEP Comments at p. 2, ls. 2-9)

6 TEP proposes deletion of the term "net original cost" from the Rules' definition of
7 stranded costs. What TEP essentially proposes is to replace a known and commonly used
8 ratemaking term, "net original cost," with a vague and completely undefined term. The
9 Commission's insertion of the term "net original cost" provides a certain point from which to
10 measure the calculation of stranded costs. Thus, this term should be retained.

11 TEP also proposes that the words "non-nuclear" be added after nuclear power in the
12 definition of system benefits. This change is inappropriate. Decommissioning costs associated
13 with non-nuclear generating plants, depreciating assets, should not be included in system
14 benefits. In fact, TEP provides no explanation as to the reason for including these costs, which
15 are traditionally costs incurred by the utility and subject to traditional ratemaking not inclusion in
16 system benefit charges.

- 17 • Competitive Phases (TEP Comments at p. 2, ls. 14-23)

18 AECC submits that TEP's proposed deletion of the term "non-coincident" and
19 substitution with the term "minimum demand" is inappropriate. "Minimum demand" will
20 further restrict competition as it is substantially likely that far fewer consumers will have a
21 minimum demand of 1 MW than a peak demand of 1 MW. As full competition is now
22 approximately 18 months away, further restriction of the availability of competition is simply
23 unacceptable.

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- 1 • Recovery of Stranded Costs of Affected Utilities(TEP Comments at p. 3, l. 12- p.
2 4, 1.6)

3 TEP proposes to delete language contained in R14-2-1607(A) regarding the expansion of
4 wholesale or retail markets and the provision of regulatory utility services for profit. TEP's
5 proposed deletion would discourage mitigation efforts. If, as TEP claims, most of the new
6 products and services in the electric industries will develop in the unregulated competitive
7 marketplace, then TEP is not harmed by the inclusion of such language. If, on the other hand,
8 the use of new products and services develops in connection with regulated utility services, then
9 revenues from the provision of such services should be used to further reduce stranded costs. Of
10 course, if Affected Utilities divest their generation assets, these concerns would not even exist.

11 TEP continues to voice its disagreement with the self-generation exclusion. The
12 inclusion of the self-generation exclusion in the Rules merely recognizes the pre-existing right of
13 any customer to self-generate.

14 Finally, TEP requests additional language in R14-2-1607.G which language would allow
15 Affected Utilities to implement "standby tariffs" or "similar means" to recover resultant stranded
16 costs. TEP's proposal is merely an end run that would undermine the right of any electric
17 consumer to self-generate electric power.

- 18 • Transmission and Distribution Access (TEP Comments at p. 4, ls. 7-20)

19 TEP's attempts to further revise R14-2-1609 are unnecessary. The Commission's Rules
20 will help facilitate formation of and participation in the AISA by electric utility providers..
21 Further tinkering with this provision as proposed by TEP and the other Affected Utilities may
22 provide benefits to the Affected Utilities but offers nothing to Arizona's consumers. Moreover,
23 since substantial changes to the Rules risk postponing the date at which the benefits of
24 competition are made available to Arizona's consumers, such unnecessary and one-sided
25 modifications should be rejected.

26

- 1 • Separation of Monopoly and Competitive Services (TEP Comments at p. 6, ls. 5-17)

2 TEP proposes changing the deadline for separating generation and transmission assets set
3 forth in R14-2-1615 to 2003 from 2001. This is inappropriate. The Affected Utilities need to be
4 required to move diligently towards the introduction of competition. Separation of monopoly
5 and competitive services is an important feature of ensuring the success of Arizona's restructured
6 electric industry. To the extent that a particular Affected Utility cannot accomplish separation by
7 the required date, the Affected Utility may request, and the Commission may, in the public
8 interest, grant a waiver. Thus, there is no need for changing this provision of the electric
9 competition Rules.

10 **AECC's Response to City of Tucson's Comments on the Recommendations of the Hearing**
11 **Officer Regarding Electric Competition Rulemaking ("Tucson Comments")**

- 12 • Purchase of Power for Standard Offer Service (Tucson Comments at p.2, ls.18-26)

13 AECC fully supports the change to R14-2-1606(B) proposed by the City of Tucson.
14 Such change would ensure that power purchased by a UDC to provide standard offer services
15 will be acquired through a competitive bidding process thereby assuring consumers of the lowest
16 possible cost.

- 17 • Solar Portfolio Standard (Tucson Comments at p.3, ls.1-17)

18 AECC disagrees with the City of Tucson regarding retention of the solar portfolio
19 standard. The Commission has properly established a separately docketed proceeding to address
20 the propriety of a solar portfolio standard. AECC believes that this separate proceeding is the
21 appropriate place to determine whether it is in the public interest to require inclusion of solar
22 generated power in the provision of electric services to customers. Notably, AECC asserts that,
23 should the Commission determine through the course of this separate proceeding that use of solar
24 power is warranted, it should ensure that those who wish to use solar and other alternative
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1 sources of so-called environmentally friendly energy technology are the consumers who pay for
2 the use of such technologies.

- 3 • Rates (Tucson Comments at p.4, ls.8-10)

4 AECC agrees with the City of Tucson that the first sentence of R14-2-1612(D) should be
5 deleted. This provision is unnecessary and makes little sense in the context of the rules.

- 6 • Affiliate Transactions (Tucson Comments at p.5, ls.7-21)

7 Again, as set forth in AECC's May 14, 1999 comments, and in the comments separately
8 submitted by Enron Corp., and as discussed above, AECC joins the City of Tucson in urging the
9 Commission to reinstate the affiliate transaction restrictions to the Rules to protect consumers
10 from the inherent risks of market power abuse associated with transactions between Affected
11 Utilities and their affiliates.

12 **AECC's Response to Arizona Community Action Association's Comments on April 14,**
13 **1999 Proposed Rule ("ACAA Comments")**

- 14 • Competitive Phase (ACAA Comments at pp.2-3)

15 The ACAA proposes to increase the availability of competitive electric services to
16 residential consumers by increasing the minimum percentage. This is totally unwarranted.
17 Currently, the Rules provide that of the 20 percent of 1995 peak demand that is eligible for
18 competition, a sufficient amount must be set aside to meet 10% of residential customer needs
19 during the transition period. There is simply no basis for increasing the percentage of capacity
20 reserved for residential consumers.

21 ACAA also argues that stranded costs will be shifted to residential customers. This claim
22 is likewise unsupported and unfounded. ACAA makes no showing that such cost shifting will
23 occur. Indeed, as the Commission's Rules provide for proportionality, residential consumers will
24 be required to pay no more towards such costs than they are currently paying.

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1 Finally, ACAA's suggestion that the Commission require ESPs to serve a percentage of
2 the residential market must be rejected. Such a requirement would extend the arm of regulation
3 into the electric generation supply market. The Commission must not continue to regulate
4 certain aspects of the generation of electric power if competition in Arizona is to succeed.

5 **AECC's Response to Comments of New West Energy ("New West Energy Comments")**

6 • Service Acquisition Agreements (New West Energy Comments at p. 1, ls. 1-23)
7 AECC agrees with New West Energy that Service Acquisition Agreements should be, to
8 the extent practical, standardized Commission-approved agreements setting forth the terms and
9 conditions of competitive services used to create uniformity in the industry. Limited
10 governmental involvement in market entry will help promote competition. AECC does note,
11 however, that use of a so-called "off-the-shelf" agreement must not limit or restrict ESPs from
12 doing business in Arizona by failing to recognize the unique characteristics and attributes that
13 each ESP brings to the State.

14 • Certificates of Convenience and Necessity (New West Energy Comments at
15 pp. 3-8)
16 AECC also supports New West Energy's recommendations to streamline the CC&N
17 application process by making the process "analogous to a license application." The goal of
18 Arizona's restructured electric industry is to promote competition. Cumbersome and
19 unnecessary governmental intervention in the CC&N process can only hamper competition.

20 RESPECTFULLY SUBMITTED this 7th day of June, 1999.

21 FENNEMORE CRAIG, P.C.

22
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