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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

CARL J. KUNASEK
Chairman

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JIM IRVIN
Commissioner

JUN 04 1999

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Commissioner

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

DOCKET NO. RE-00000C-94-0165

STAFF'S RESPONSIVE COMMENTS REGARDING PROPOSED RULES

Staff of the Arizona Corporation Commission ("Staff") hereby files its comments in response to the comments filed by interested parties on May 14, 1999.

R14-2-203 "Establishment of Service"

Issue: Commonwealth Energy Corporation ("Commonwealth") states that according to R14-2-203.B.9, 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. Commonwealth also recommends the deletion of this provision.

Evaluation: It is clear that the only reason a Utility Distribution Company ("UDC") can increase a deposit is for the return to standard offer service which may be more expensive. As a result, customers should be motivated to choose another ESP and not return to standard offer service.

Recommendation: No change is necessary.

Issue: New West Energy ("NWE") recommends a provision be added to R14-2-203.B.6 to clarify that deposits for residential and nonresidential customers would be estimated using average monthly usage for noncompetitive services.

Evaluation: The existing rule already contains the word "estimated".

Recommendation: No change is necessary.

Issue: NWE recommends that the language "including transfers between Electric Service Providers" in R14-2-203D.1 be deleted.

1 **Evaluation:** A charge for transfers between ESPs is specifically contemplated by the
2 rules.

3 **Recommendation:** No change is necessary.

4 **R14-2-210 “Billing and Collection”**

5 **Issue:** Tucson Electric Power Company (“TEP”) recommends that R14-2-210.A.5.c be
6 deleted as the utility or billing entity does have the ability to do this and such bills can be
7 estimated in accordance with R14-2-209A.8 and R14-2-1612.K.14.

8 **Evaluation:** As a general rule direct access customers bills should not be estimated.

9 **Recommendation:** No change is necessary.

10 **Issue:** NWE states that that the terms “utility” and “customer” are not defined in R-14-2-
11 210A.2.

12 **Evaluation:** These terms are defined in R14-2-201.

13 **Recommendation:** No change is necessary.

14 **Issue:** NWE states that the rules for estimated meter readings should be developed by
15 the working group and should not be included in R14-2-210A.3 through 6.

16 **Evaluation:** This rule sets forth conditions which the working groups have previously
17 developed.

18 **Recommendation:** No change is necessary.

19 **Issue:** NWE states that R14-2-210.C through I should be stricken in their entirety
20 because it believes they do not apply to ESPs and to the extent they apply to UDCs, they should
21 be covered by the UDC’s tariffs.

22 **Evaluation:** These rules do apply to UDCs.

23 **Recommendation:** No change is necessary.

24 **R14-2-211 “Termination of Service”**

25 **Issue:** Commonwealth proposed the deletion of the opening sentences in Rules, R14-2-
26 211.B and C, which prohibits termination of service for nonpayment. Commonwealth
27 recommends the deletion of the opening sentences in rules R14-2-211.B and C, which prohibits
28 termination of service for nonpayment.

1 **Evaluation:** ESPs can terminate service to customers for nonpayment through
2 terminating their contract with customers.

3 **Recommendation:** No change is necessary.

4 **R14-2-213 “Conservation”**

5 **Issue:** TEP proposed deleting this section because it is premature, the issue will be
6 addressed when revisiting the Resource Planning rules, it should apply to all utilities and ESPs,
7 and it should be delayed until there is 100 percent statewide competition.

8 **Evaluation:** This rule has been in effect for several years. There is no justification for
9 deleting it at this time.

10 **Recommendation:** No change is necessary.

11 **R14-2-1601 “Definitions”**

12 **1601 “Economic Development Tariffs”**

13 **Issue:** In our May 14, 1999, comments, Staff recommended adding language to R14-2-
14 1606.C.6, referring to “economic development tariffs that clearly mitigate Stranded Costs.” Staff
15 also proposed to add a new R14-2-1601.13, to define “Economic Development Tariffs” as “those
16 discounted tariffs used to attract new business expansions in Arizona, which can be shown to
17 significantly mitigate Stranded Costs.”

18 Staff believes that its proposed language in the two rules is redundant, and therefore
19 would modify its definition of “Economic Development Tariffs” by deleting “which can be
20 shown to significantly mitigate Stranded Costs.”

21 **1601 “Public Power Entity”**

22 **Issue:** Trico Electric Cooperative (“Trico”) and Commonwealth both note that the term
23 Public Power Entity is undefined in the rules, and recommend adding a definition consistent with
24 A.R.S. § 30-801.16.

25 **Evaluation:** Staff concurs with these comments. Staff also addressed this issue in its May
26 14, 1999, comments.

1 **Recommendation:** Staff recommended the following new definition in its May 14, 1999,
2 comments: “Public Power Entity’ incorporates by reference the definition set forth in A.R.S. §
3 30-801.16.”

4 **1601.5 “Competitive Services”**

5 **Issue:** Arizona Public Service Company (“APS”) recommends that the definition of
6 Competitive Services be modified to specifically identify those services that are competitive,
7 rather than simply stating that Competitive Services means any aspects of retail electric service
8 except those defined as Noncompetitive. APS believes that its proposal brings clarity to the
9 definition, and allows APS to provide such services as power quality to its customers. In
10 addition, APS believes that its proposed definition is consistent with R14-2-1607.A’s recognition
11 that mitigation of Stranded Costs may be accomplished by offering a “wider scope of permitted
12 regulated utility services for profit.” APS states that its proposed language will not overly
13 restrict any party from offering retail electric services that may emerge to the benefit of
14 consumers.

15 **Evaluation:** The rules divide electric services into two categories, competitive and non-
16 competitive. They are mutually exclusive, as is shown by the definition of Noncompetitive
17 Services. The rules explicitly prohibit Affected Utilities or Utility Distribution Companies from
18 providing Competitive Services after January 1, 2001. R14-2-1615.B. APS appears to be
19 attempting to create a third category of services: Competitive Services that may be provided by
20 Affected Utilities or Utility Distribution Companies. Services in this category apparently include
21 power quality and “retail electric services that may emerge to the benefit of consumers.” Staff
22 believes that the existing definition is sufficiently clear, and maintains the proper distinction
23 between services that may be provided by Affected Utilities or Utility Distribution Companies,
24 and those services that may not. Staff does not believe that any modification to this definition is
25 warranted.

26 **Recommendation:** No change is necessary.
27
28

1 **1601.4 “Competition Transition Charge”**

2 **Issue:** Navopache Electric Cooperative, Inc. (“Navopache”) and Mohave Electric
3 Cooperative, Inc. (“Mohave”) commented that the definition of Competition Transition Charge
4 should include costs incurred by the Affected Utilities in implementing these rules. Navopache
5 and Mohave argue that these costs would not be incurred but for customers selecting competitive
6 services, and it is those customers, rather than the customers who remain on Standard Offer
7 service, who should bear the costs.

8 **Evaluation:** Staff believes that many of Navopache’s and Mohave’s concerns are
9 already addressed by the proposed modification to the definition of Stranded Cost to include
10 “other transition and restructuring costs.” Those costs are to be recovered through the
11 Competition Transition Charge. Therefore, Staff believes that it is unnecessary to make the
12 modification recommended by Navopache and Mohave.

13 **Recommendation:** No change is necessary.

14 **1601.15 “Electric Service Provider Service Acquisition Agreement”**

15 **Issue:** NWE recommends that the Electric Service Provider Service Acquisition
16 Agreement be a standardized, Commission-approved agreement between an Affected Utility and
17 an Electric Service Provider. NWE believes that the rule as written creates an uncertain process
18 that may deter potential ESPs from competing in Arizona. NWE also argues that a standardized,
19 Commission-approved agreement is the most efficient mechanism for controlling the technical
20 and financial viability of competitors.

21 **Evaluation:** Staff agrees with the conclusion reached in Decision No. 61634 on this
22 issue, wherein the Commission stated in response to NWE’s same arguments that “We do not
23 believe the certification process to be overly burdensome or anti-competitive.” Appendix C, p.
24 10.

25 **Recommendation:** No change is necessary.

26 **1601.27 “Noncompetitive Services”**

27 **Issue:** Navopache and Mohave argue that it is necessary for customer-owned distribution
28 cooperatives to maintain the relationships and communications links with their members/owners

1 for membership, voting and other purposes. To achieve that goal, Navopache and Mohave
2 recommend that the definition of Noncompetitive Services be modified to state that metering,
3 meter ownership, meter reading, billing, collections and information services are deemed to be
4 non-competitive services in the service territories of the distribution cooperatives.

5 **Evaluation:** Staff believes that the proposed amendments already allow for distribution
6 cooperatives to maintain links with their members/owners. R14-2-1615.B.1. explicitly allows an
7 Affected Utility or Utility Distribution Company to bill its own customers for distribution service
8 and to provide billing services to Electric Service Providers in conjunction with its own billing.
9 The rule also allows an Affected Utility or Utility Distribution Company to provide billing and
10 collections, Metering and Meter Reading Service as part of its Standard Offer Service tariff to
11 Standard Offer Service customers. Staff believes that these provisions of R14-2-1615.B.1. allow
12 distribution cooperatives to maintain sufficient links with their members/owners.

13 **Recommendation:** No change is necessary.

14 **1601.35 “Stranded Cost”**

15 **Issue:** TEP argues that the replacement of the word “value” with “net original cost” in
16 the proposed amendments is not appropriate because the new term may be inconsistent with
17 assets held under lease arrangements and with various regulatory assets. Trico recommends
18 adding “and distribution assets” after “regulatory assets” in R14-2-1601.35.a.i., because
19 distribution electric public service corporations are also entitled to recover their Stranded Costs.

20 **Evaluation:** Staff concurs with the change made in Decision No. 61634 to replace
21 “value” with “net original cost.” Staff does not believe that this language will act to preclude
22 TEP from seeking what it believes to be an appropriate level of recovery for its Stranded Costs.

23 Staff recognizes that competition may result in distribution Stranded Costs. However, it
24 is Staff’s opinion that due to the difficulty in calculating distribution Stranded Costs prior to
25 competition, it is more appropriate to deal with those costs in rate cases for distribution electric
26 public service corporations. Staff therefore recommends that the definition of Stranded Costs not
27 be changed.

28 **Recommendation:** No change is necessary.

1 **1601.36 "System Benefits"**

2 **Issue:** NWE states that the definition of "System Benefits" is "vague and fails to specify
3 who will determine what specific costs qualify as System Benefits."

4 **Evaluation:** In the original Retail Electric Competition rules, approved in December
5 1996, it was clear to all parties that the System Benefits charge rates were to be filed by Affected
6 Utilities by a date specified in R14-2-1602, which was December 31, 1997. Most Affected
7 Utilities filed by the deadline, or shortly thereafter. Some Affected Utilities, such as a number of
8 cooperatives, indicated that they had no System Benefits charges. Staff believes that it is the
9 intent of the Hearing Division to consider testimony on System Benefit charges in the Stranded
10 Cost and Unbundled Tariff hearings that will commence in August 1999. Thereafter, the
11 Commissioners will determine the specific costs as part of the orders resulting from those
12 proceedings. Therefore, Staff believes that no change is necessary.

13 **Recommendation:** No change is necessary.

14 **Issue:** TEP urges the Commission to add the word "non-nuclear" to the types of
15 decommissioning costs that may be recovered through a System Benefits charge. TEP argues
16 that generating plants other than nuclear will also have decommissioning costs in the future.

17 **Evaluation:** Staff does not believe that non-nuclear decommissioning costs should be
18 included in System Benefits, for two reasons. First, nuclear decommissioning costs are already
19 being collected in rates, in part because nuclear utilities are required by the Nuclear Regulatory
20 Commission to begin accumulating funds for decommissioning while the nuclear plants are
21 operating. This is not the case with non-nuclear facilities. In addition, nuclear decommissioning
22 costs are of such a great magnitude that it is reasonable to attempt to spread them over the
23 operating life of the plant. It is unlikely that the costs to decommission non-nuclear plants will
24 be as large.

25 **Recommendation:** No change is necessary.

26 **1601.40 "Utility Distribution Company"**

27 **Issue:** The Arizona State Association of Electrical Workers and TEP urge the
28 Commission to insert the word "constructs" as part of the definition of a Utility Distribution

1 Company so that the definition would include an entity that “operates, constructs and maintains
2 the distribution system” The Arizona State Association of Electrical Workers argues that
3 when utilities were awarded a Certificate of Convenience and Necessity, they entered into a
4 compact with the Commission and with the citizens and ratepayers of the state to provide
5 electricity in a safe and reliable fashion. Utilities meet their commitment through trained
6 workforces to construct, operate and maintain the electrical distribution system. TEP argues that
7 it will be the responsibility of the UDC for the construction of the transmission and distribution
8 systems to ensure consistent, safe and reliable service.

9 **Evaluation:** Although Staff disagrees that a compact has been formed between the
10 utilities and the Commission, see U S WEST Communications, Inc. v. Arizona Corporation
11 Commission, 1 CA-CV 97-0517 (Ct. App. Div. 1, May 18, 1999), Staff does agree that
12 “construction” is an integral part of the provision of electrical distribution service. Staff
13 therefore agrees with the comments of the Arizona State Association of Electrical Workers and
14 TEP.

15 **Recommendation:** Add the word “constructs” after “operates” in the definition of
16 “Utility Distribution Company.”

17 **R14-2-1602 “Commencement of Competition”**

18 **Issue:** Arizona Electric Power Cooperative, Inc. (“AEPSCO”) proposed statewide
19 competition to commence at the same time, subject to the phase-in schedule in R14-2-1604.
20 Commonwealth made a proposal that full competition commence immediately upon the
21 conclusion of the Stranded Cost/unbundling proceeding.

22 **Evaluation:** It appears both proposals would delay the commencement of competition
23 until all the Stranded Cost/unbundling proceedings are concluded, rather than bring the benefits
24 of competition to the citizens of Arizona as quickly as possible at the conclusion of each
25 Affected Utility’s proceedings. Further, phasing in competition under R14-2-1604 establishes a
26 workable timetable to implement competition to various customer classes.

27 **Recommendation:** No change is necessary.

28

1 **R14-2-1603 "Certificates of Convenience and Necessity"**

2 **1603.A**

3 **Issue:** AEPCO, Duncan Valley Electric Cooperative, Inc. ("Duncan") and Graham
4 County Electric Cooperative, Inc. ("Graham") proposed modifying the third sentence as follows:

5 A Utility Distribution Company providing Standard Offer Service or
6 services authorized in R14-2-1615 after January 1, 2001 need not apply
7 for a Certificate of Convenience and Necessity.

8 This change is needed to remedy the conflict between R14-2-1603 and 1605 which might result
9 if one were to conclude that a distribution cooperative needs to acquire a new Certificate of
10 Convenience and Necessity ("CC&N") to provide competitive services pursuant to R14-2-1615.

11 **Evaluation:** Staff agrees with these comments.

12 **Recommendation:** Amend R14-2-1603.A as follows:

13 A Utility Distribution Company providing Standard Offer service or
14 services authorized in R14-2-1615.C after January 1, 2001, need not apply
for a Certificate of Convenience and Necessity.

15 **1603.B**

16 **Issue:** Arizona Community Action Association ("ACAA") proposes to insert new
17 language in R14-2-1603.B.1. The new language which would require the CC&N applicant to
18 provide information would be as follows:

- 19 1. A description of the electric services which the applicant intends
20 to offer; including a plan to enroll and serve at least 15% of the
total residential consumers eligible on October 1, 2000;

21 **Evaluation:** This rule is suggested by ACAA to help make the residential market an
22 equitable and robust market. Staff, however, considers this proposal to be in direct conflict with
23 efforts to develop a competitive market that will attract the maximum number of potential
24 provider applicants. The requirement suggested by ACAA may in fact discourage some
25 competitors from entering the Arizona market. This recommendation does not serve the public
26 interest.

27 **Recommendation:** No change is necessary.

28

1 **1603.B.3 through 7**

2 **Issue:** NWE recommends that R14-2-1603.B.3., which requires the Certificate of
3 Convenience and Necessity applicant to file a tariff for each service to be provided, be modified
4 in the following manner:

- 5 3. A tariff for each service to be provided that states the ~~maximum rate and terms~~
6 and conditions that will apply to the provision of the service.

7 NWE feels this recommendation is appropriate because R14-2-1611.A indicates that market rates
8 are deemed to be just and reasonable. NWE proposes to delete items 4, 5, 6, and 8 relating to
9 Certificate of Convenience and Necessity application information concerning the applicant's
10 technical ability, financial capability, description of form of ownership, and requiring any other
11 information the Commission or Staff may request. Additionally, in R14-2-1603.B.7, NWE
12 suggests the following change:

- 13 7. An explanation of how an applicant which is an affiliate of an Affected Utility ~~the~~
14 ~~applicant~~ intends to comply with the requirements of R14-2-1616, or a request for
15 waiver or modification thereof with an accompanying justification for any such
requested waiver or modification.

16 **Evaluation:** R14-2-1603.B.3 should not be modified because the filed tariff stating the
17 maximum rate is a required item in the competitive service tariff. The Commission is
18 constitutionally responsible for evaluating the service rates of public service utilities. The
19 application information for the Certificate of Convenience and Necessity described in items 4, 5,
20 6, and 8 are consistent with other CC&N services regulated by the Commission. The CC&N
21 application involved in the Commission's certification process is in the public interest. The
22 CC&N and certification authority is required not only in the rules of the Commission but in
23 HB2663. The specifics of what the Commission means by technical capability, financial
24 capability, and other information is obvious in the CC&N application form. Staff agrees with
25 NWE that R14-2-1603.B.7 should be modified to reflect the fact that R14-2-1615 by its terms
26 applies only to Affected Utilities planning to provide competitive services through a competitive
27 electric affiliate. The applicant which is an affiliate of an Affected Utility should be required to
28

1 provide a statement of whether the Affected Utility has complied with the requirements of R14-
2 2-1616.

3 **Recommendation:** No changes are necessary for any of the above except for R14-2-
4 1603.B.7. Staff recommends replacing R14-2-1603.B.7 in its entirety with the following:

- 5 7. For an applicant which is an affiliate of an Affected Utility, a statement of
6 whether the Affected Utility has complied with the requirements of R14-2-
7 1616, including the Commission decision number approving the code of
8 conduct, where applicable.

9 **1603.E**

10 **Issue:** NWE proposes to delete the entire section concerning the requirement of the
11 CC&N application to provide notification of its application to each of the respective Affected
12 Utilities, Utility Distribution Companies or an electric utility not subject to the jurisdiction of the
13 Commission in whose service territories it wishes to offer service. The deletion is proposed to
14 avoid having a rule that would protect the Affected Utilities' market share and promote unfair
15 business practices.

16 **Evaluation:** This requirement is necessary to meet notice requirements for any CC&N
17 application. It is in the public interest to insure proper notice is provided by the applicant.

18 **Recommendation:** No change is necessary.

19 **1603.F**

20 **Issue:** NWE proposes to delete this section which states that the Commission may issue
21 a CC&N for a specific period of time. NWE feels this provision would add a further obstacle to
22 market entry by some ESPs and would deter some such entrants from competing in Arizona.
23 Instead of the provision, NWE feels that the necessary security provisions can be efficiently
24 achieved through an ESP Service Agreement.

25 **Evaluation:** This requirement is necessary to provide the Commission added flexibility
26 in certificating ESPs who have little or no experience. A CC&N issued under this provision will
27 automatically expire, however, the ESP has the opportunity to seek to extend the effectiveness of
28 the CC&N

Recommendation: No change is necessary.

1 **1603.G**

2 **Issue:** NWE proposes to delete subsections 2, 4, and 5. According to NWE, subsection
3 2 should be deleted because the technical and financial capabilities of an ESP can be controlled
4 through the ESP Service Agreement with the UDC. Subsection 4 should not be a precondition to
5 certification. (This concept is developed in NWE's comment to R14-2-1603.I.) NWE feels that
6 subsection 5 is not necessary.

7 **Evaluation:** The subsections in question address the public interest and consumer
8 protection. Staff believes that if those items are not addressed, it would not be in the public
9 interest to issue a CC&N to an applicant. Staff believes it is important that these provisions
10 remain so that these issues are explicitly addressed.

11 **Recommendation:** No change is necessary.

12 **Issue:** ACAA proposes to insert an additional rule condition for the Commission to deny
13 certification to any CC&N application as subsection #7 in R14-2-1603.G. The new condition for
14 denial would be as follows:

15 7. fails to provide a plan to enroll and serve residential consumers pursuant to R14-
16 2-1603.B.1.

17 **Evaluation:** This rule is suggested by ACAA to help make the residential market an
18 equitable and robust market. Staff, however, considers this proposal to be too restrictive and
19 may keep potential service providers from viewing Arizona's retail market as being entirely open
20 to providers offering competitive service to those customers they are targeting to serve. This
21 could, ironically, result in fewer potential provider applicants and, therefore, lessen competition.
22 This recommendation does not serve the public interest.

23 **Recommendation:** No change is necessary.

24 **1603.I**

25 **Issue:** NWE recommends the following change to the rule:

26 4. The Electric Service Provider shall maintain on file with the Commission all
27 current tariffs ~~and any service standards that the Commission shall require;~~
28

1 NWE argues that the term “service standards” is not defined in the rules and the requirement in
2 the rule does not provide adequate notice of the requirements for remaining certificated in
3 Arizona.

4 **Evaluation:** It is in the public interest for the Commission to require Electric Service
5 Providers to file any service standards the Commission deems necessary to serve its customers.

6 **Recommendation:** Staff supports making the change. Delete the following phrase from
7 R14-2-1603.I.4: “and any service standards that the Commission shall require.”

8 **Issue:** NWE recommends R14-2-1603.I.6 be deleted:

- 9 6. The Electric Service Provider shall obtain all necessary permits and licenses
10 including relevant tax licenses.

11 NEW believes that the Commission has no authority to police state-law permit and license
12 requirements.

13 **Evaluation** Staff believes the item should remain in the rule because it is in the public
14 interest.

15 **Recommendation:** No change is necessary.

16 **Issue:** ACAA proposes to insert an additional condition for an ESP to obtain a CC&N.
17 ACAA proposes addition the following subsection to R14-2-1603.I:

- 18 9. The Electric Service Provider shall comply with the provisions of R14-2-1603.B.1
19 on or before September 1, 1999.

20 **Evaluation:** This rule is suggested by ACAA to help make the residential market an
21 equitable and robust market. Staff, however, considers this proposal to be too restrictive and may
22 keep potential service providers from viewing Arizona’s retail market as being entirely open to
23 providers offering competitive service to those customers they are targeting to serve. This could
24 result in fewer competitors seeking to provide service in Arizona. This recommendation does
25 not serve the public interest.

26 **Recommendation:** No change is necessary.

27 **Issue:** Navopache and Mohave recommend that another subsection be added to R14-2-
28 1603.I.:

1 9. An Electric Service Provider certificated pursuant to this Article shall be subject
2 to the jurisdiction of the Arizona Corporation Commission.

3 **Evaluation:** The rules are specific in regard to what entities are governed by the
4 competitive retail electric rules. Likewise HB2663 describes the CC&N jurisdictional authority
5 of the Commission for public power entities.

6 **Recommendation:** No change is necessary.

7 **1603.K**

8 **Issue:** NWE recommends R14-2-1603.K be deleted:

9 K. In appropriate circumstances, the Commission may require, as a precondition to
10 certification, the procurement of a performance bond sufficient to cover any
11 advances or deposits the applicant may collect from its customers, or order that
such advances or deposits be held in escrow or trust.

12 NWE argues that this section should be deleted entirely because the performance bond or escrow
13 requirement should not be a precondition to certification because, before the ESP commences to
14 do business in the state, the amount of the bond or the amount to be held in escrow can only be
15 based on estimations. Further, an ESP should be required to post a performance bond or to hold
16 funds in escrow that are sufficient to cover advances or deposits from its customers, but this
17 requirement should initiate after certification and should reflect the actual amount of deposits.

18 **Evaluation:** This rule is needed to provide the Commission flexibility in having the
19 CC&N applicant address customer protection concerns prior to being certificated. The bond is
20 just one option to address customer protection in the certification process.

21 **Recommendation:** No change is necessary.

22 **R14-2-1604 "Competitive Phases"**

23 **1604.A**

24 **Issue:** Commonwealth wants to serve commercial loads of all sizes, but the rule does not
25 include smaller customers with loads less than 1 MW or who cannot aggregate 40 kW loads into
26 1 MW during the phase-in to competition. NWE commented that the rule is unclear in regard to
27 aggregation of loads and the definition of "customer." The rule does not allow any further
28 aggregation once 20 percent of an Affected Utility's 1995 system peak demand is reached,

1 although more 1 MW customers could be allowed. TEP suggested that "minimum demand" be
2 used instead of "non-coincident" peak to determine eligibility of loads because using non-
3 coincident peaks would make 40 kW aggregation meaningless. TEP also suggested that the
4 eligibility of 40 kW customers who do not have available load data be determined by using
5 consumption of 16,500 kWh per month in six months out of 12 consecutive months instead of
6 one month out of 12 consecutive months.

7 **Evaluation:** The rule currently does not require Affected Utilities to allow small
8 commercial customers to participate in the competitive market during the phase-in. However, all
9 classes of customers will be eligible by January 1, 2001.

10 The rule is clear that the eligibility of a customer's load is to be determined at a single
11 premise. Smaller loads at other premises for the same entity would not be eligible. Staff agrees
12 that the rule as currently written appears to favor 1 MW customers over aggregated 40 kW
13 customers, but that was not the intent. The rule can be clarified by deleting the sentence that
14 states that additional aggregated customers must wait until 2001 to obtain competitive service.

15 Minimum demands should not be used to determine eligibility. A customer should not be
16 excluded because of one particular month having a lower demand than usual. TEP appears to
17 believe that all 1 MW customers would participate before allowing any aggregated 40 kW
18 customers to participate. That is not the intent of the rule; both groups of customers should have
19 equal opportunity to participate. In addition, one month should not be changed to six months to
20 determine eligibility of 40 kW customers because there should be no increased restrictions on the
21 eligibility of medium-size commercial customers.

22 **Recommendation:** Delete the last sentence in R14-2-1604.A.2.

23 **1604.B**

24 **Issue:** NWE suggested that the proposed limitations on residential participation will
25 make the residential market unattractive to potential ESPs, but NWE did not make a specific
26 recommendation other than that the section should be "entirely revised." ACAA proposed that
27 the minimum percentages for participation of residential customers be increased.
28 Commonwealth believes that it should not have to obtain a customer list from its competing

1 utility in order to market and that the waiting list of interested residential customers should be
2 distributed to all ESPs.

3 **Evaluation:** The ACAA-proposed percentage increases are probably too small to have
4 a major impact on participation of residential customers. Staff agrees that any lists of interested
5 customers should be readily available to ESPs if the customers have given permission for their
6 names and other information to be released. The rule does not preclude this.

7 **Recommendation:** No change is necessary.

8 **1604.C**

9 **Issue:** APS recommended that the word "including" replace "such as" when referring to
10 rate reductions in the sentence that requires reports detailing possible mechanisms to provide
11 benefits. This would clarify that the rule does not require a rate reduction. NWE commented
12 that a mandatory rate reduction would be anti-competitive unless applied to all customers and
13 that information about a rate reduction must be made available before competition begins.

14 **Evaluation:** The rule does not require a rate reduction.

15 **Recommendation:** No change is necessary.

16 **1604.D**

17 **Issue:** Because stakeholders have been preparing for the transition to competition over
18 the past five years, Commonwealth recommends that the Commission order full competition
19 immediately upon the conclusion of the Stranded Cost/Unbundling proceedings. The City of
20 Tucson also recommends that the phase-in be eliminated and a flash cut be substituted.

21 **Evaluation:** A flash-cut would eliminate many of the inequities and other problems
22 associated with a phase-in. However, the current phase-in is much shorter than the one in the
23 1996 version of the rules.

24 **Recommendation:** No change is necessary.

25 **R14-2-1605 "Competitive Services"**

26 **Issue:** R14-2-1605 requires Certificates Of Convenience And Necessity for all
27 competitive services. AEPCO, Duncan, Graham, Trico, Navopache, and Mohave argue that this
28 requirement conflicts with R14-2-1615.C, which allows distribution cooperatives to provide

1 competitive services within their distribution service territories after January 1, 2001. The
2 cooperatives believe that it was not the intent of R14-2-1615.C to require them to obtain a
3 CC&N in order to provide competitive services within their distribution service territories.

4 **Evaluation:** Staff agrees with these comments.

5 **Recommendation:** Staff recommends the following addition to R14-2-1605: Except as
6 provided in R14-2-1615.C, Competitive Services shall require a Certificate of Convenience and
7 Necessity and a tariff as described in R14-2-1603.

8 **R14-2-1606 "Services Required to be Made Available"**

9 **1606.A**

10 **Issue:** APS proposed that a sentence be added to state that a Utility Distribution
11 Company, at its option, may provide Standard Offer Service to customers whose annual usage is
12 more than 100,000 kWh. Navopache and Mohave proposed additional language to state that the
13 Utility Distribution Company shall offer Standard Offer Service to the larger customers if the
14 tariff covers the cost of providing the service and that the Utility Distribution Company could
15 seek Commission approval for additional rate schedules to provide such service.
16 Commonwealth suggested that ESPs be allowed to bid on services furnished to Standard Offer
17 customers.

18 **Evaluation:** The rules already allow Utility Distribution Companies to provide
19 Standard Offer Service to customers with usage greater than 100,000 kWh, but Utility
20 Distribution Companies will not be providers of last resort for those customers. ESPs cannot bid
21 on Standard Offer service because the Commission has determined that Standard Offer Service is
22 a Noncompetitive Service.

23 **Recommendation:** No change is necessary.

24 **1606.B**

25 **Issue:** Commonwealth proposed that power for Standard Offer Service be acquired
26 through a competitive bid process instead of through the "open market." In addition,
27 Commonwealth proposed that cooperatives not be excluded from the requirement of this section.
28 The City of Tucson feels that the meaning of "open market" is not clear and proposed that power

1 for Standard Offer Service be acquired "through a competitive procurement with prudent
2 management of market risks, including management of price fluctuations." TEP proposed that a
3 purchased power adjustment mechanism be used to facilitate open market transactions.

4 **Evaluation:** Staff agrees with Commonwealth and City of Tucson that power for
5 Standard Office Service should be acquired through competitive bidding, and agrees with the
6 City of Tucson's proposed language. Staff opposes the use of a purchased power adjustment
7 mechanism because it would reduce the incentive for the utility to obtain reliable power sources
8 at reasonable rates.

9 **Recommendation:** Add the following sentence to R14-2-1606.B:

10 "Standard Offer Service power shall be acquired through a competitive
11 procurement with prudent management of market risks, including
management of price fluctuations.

12 However, if the Commission does not adopt a competitive bid process, then the term "open
13 market" should be defined.

14 **1606.C**

15 **Issue:** Navopache and Mohave proposed adding language to R14-2-1606.C.2 to not
16 require Standard Offer Service tariffs to be unbundled when wholesale power supplies are
17 obtained on a bundled basis. Trico made a similar comment. APS recommended that the
18 prohibition of "contracts with term" in R14-2-1606.C.6 be deleted or at least limited to customers
19 whose annual usage is 100,000 kWh or less because the prohibition restricts customer options
20 and imposes burdens on the Utility Distribution Company when large customers leave from or
21 return to Standard Offer Service. Commonwealth suggested that a Utility Distribution Company
22 not be allowed to offer any discount, special contract, or unique tariff to any particular customer.
23 APS also recommended that an Affected Utility be allowed to submit for Commission approval a
24 plan for unbundling Standard Offer Service that varies from the requirements of this section.

25 **Evaluation:** When possible, unbundled elements need to be standard across companies
26 so that comparisons can be made. No changes to R14-2-1606.C.2 are required because a utility
27 can file for Commission approval of a waiver, if necessary. The intent of R14-2-1606.C.6 is to
28 not allow tariffs for Standard Offer Service that prevent customers from accessing a competitive

1 option. Staff believes that the prohibition against “contracts with term” is consistent with that
2 intent, and therefore no changes are required.

3 **Recommendation:** No change is necessary.

4 **1606.D**

5 **Issue:** Trico recommended that the Unbundled Service tariff not include a
6 Noncompetitive Service tariff. Instead, two separate tariffs should be filed.

7 **Evaluation:** Staff believes that the Unbundled Service tariff should reflect all
8 components of services available. In addition, Staff believes it will be less confusing to all
9 parties if Noncompetitive Services are included in the Unbundled Service tariff rather than filing
10 two separate tariffs.

11 **Recommendation:** No change is necessary.

12 **1606.G**

13 **Issue:** Commonwealth proposed that oral authorization, subject to third party
14 verification, be allowed for the release of customer data. NWE commented that the customer
15 should be able to give the data to whomever the customer wants. However, NWE did not
16 suggest a change to the section.

17 **Evaluation:** Staff believes it is important that customer information not be released
18 without written consent from the customer. Written authorization minimizes the possibility of
19 third parties receiving customer information without customer consent.

20 **Recommendation:** No change is necessary.

21 **1606.H**

22 **Issue:** R14-2-1606.H.2 provides that rates for competitive services and for
23 noncompetitive services shall reflect the costs of providing the services. Trico suggests
24 amending R14-2-1606.H.2 to clarify that cost has nothing to do with competitive rates. Trico
25 also suggests amending R14-2-1606.H.3 to clarify that flexible rates are limited to Competitive
26 Services. Trico further believes that R14-2-1606.H.2 and -1606.H.3 discriminate between
27 Utility Distribution Companies and Electric Service Providers.
28

1 **Evaluation:** Competitive rates are required to state a maximum rate and a minimum
2 rate, which cannot be below marginal cost. Accordingly, competitive rates are clearly related to
3 cost. Staff further believes that it is unreasonably restrictive to limit flexible pricing to
4 competitive services. Adjustor mechanisms, which are commonly used in monopoly regulation,
5 are a form of flexible pricing. R14-2-1606.H.3 allows flexible pricing if the tariff is approved by
6 the Commission. This approval process should provide an adequate safeguard. Because R14-2-
7 1606.H by its terms applies to both competitive and noncompetitive services, there is no
8 discrimination.

9 **Recommendation:** No change is necessary.

10 **R14-2-1607 "Recovery of Stranded Cost of Affected Utilities"**

11 **1607.A**

12 **Issue:** TEP urges the Commission to delete the reference to "expanding wholesale or
13 retail markets or offering a wider scope of permitted regulated utility services profit, among
14 others" as a mechanism for mitigating Stranded Costs. TEP believes that most new products and
15 services will develop in the unregulated, competitive market.

16 **Evaluation:** Staff concurs with the resolution of this issue in Decision No. 61634. See
17 Appendix C, p. 36. TEP's argument was not adopted. Instead, an APS proposal to add the
18 words "permitted regulated utility" before "Services for profit" was adopted. Staff believes that
19 TEP's concerns have been adequately addressed.

20 **Recommendation:** No change is necessary.

21 **1607.B**

22 **Issue:** Trico asks the Commission to insert the word "all" before "unmitigated Stranded
23 Costs" to clarify that Affected Utilities are entitled to recover all of their unmitigated Stranded
24 Costs.

25 **Evaluation:** This issue was raised in earlier comments by Trico, and rejected in Decision
26 No. 61634 on the basis that this section is sufficiently unambiguous as written. See Appendix C,
27 p. 37. Staff concurs with that resolution.

28 **Recommendation:** No change is necessary.

1 **1607.C**

2 **Issue:** Trico recommends that, after competition has been implemented, Affected
3 Utilities be required to file on an annual basis the amount of the actual unmitigated distribution
4 Stranded Costs incurred. Trico argues that because distribution Stranded Costs are not incurred
5 until after competition begins, there should be a provision in the rules stating when and how the
6 Affected Utilities should file those costs.

7 **Evaluation:** As stated above in our comments to the definition of Stranded Costs, R14-
8 2-1601.35, Staff agrees that distribution Stranded Costs may result from competition, but that
9 those costs are most properly dealt with in rate cases for the Affected Utilities. Consequently,
10 there is no need for filing distribution Stranded Costs with the Commission outside the context of
11 a rate case.

12 **Recommendations:** No change is necessary.

13 **1607.F**

14 **Issue:** TEP urges the Commission to remove the exclusion of self-generated power from
15 the calculation or recovery of Stranded Costs from a customer. TEP believes that the rule as
16 written will increase uneconomic self-generation while increasing cost burdens on customers
17 who purchase their power in the competitive marketplace.

18 **Evaluation:** Staff disagrees with TEP that the rule will create significant problems. It
19 should be noted that self-generation has been an option for customers even prior to competition,
20 and significant problems or cost-shifting have not developed. Staff agrees with the evaluation
21 and resolution of this issue contained in Decision No. 61634, that no change is warranted. See
22 Appendix C, p. 40.

23 **Recommendation:** No change is necessary.

24 **1607.G**

25 **Issue:** TEP requests adding language to this rule which would allow an Affected Utility,
26 with Commission approval, to implement stand-by tariffs or other mechanisms to recover
27 Stranded Costs in the event there are Stranded Cost recovery shortfalls resulting from conditions
28 completely outside the control of the Affected Utility.

1 **Evaluation:** Staff disagrees with TEP’s proposal to transform an opportunity to recover
2 Stranded Costs into a guarantee of recovery, and therefore believes that the proposed language
3 should not be adopted. In addition, Staff believes that the concerns expressed by TEP are best
4 addressed in the context of each Affected Utility’s Stranded Cost proceedings.

5 **Recommendation:** No change is necessary.

6 **R14-2-1609 “Transmission and Distribution Access”**

7 **Issue:** NWE suggests numerous language changes throughout this section to emphasize
8 that an Independent System Operator (“ISO”) will be “regional” in form and that the Arizona
9 Independent Scheduling Administrator (“AISA”) is an “interim” organization.

10 **Evaluation:** While there is general support for an ISO to be regional in nature, it is the
11 expanded transmission system operational functionality of an ISO that provides motivation to
12 transition from an AISA to an ISO. Section 1609.F adequately describes the support of an ISO
13 being regional and the intent to transition from an ISA to an ISO. The use of “regional” and
14 “interim” as an adjective in the numerous locations proposed by NWE is redundant and not
15 necessary.

16 **Recommendation:** No change is necessary.

17 **1609.B**

18 **Issue:** Navopache, Mohave, Trico, and APS contend that UDCs should not be required to
19 ensure adequate transmission import capability is available to meet the load requirements of all
20 distribution customers within their service areas.

21 Trico contends that such a requirement should apply only to customers receiving
22 Standard Offer Service from the UDC. Navopache and Mohave contend that the rule as written
23 places an obligation with the UDC but fails to address cost and revenue responsibility.
24 Navopache, Mohave and APS question Commission jurisdictional authority to regulate a FERC
25 jurisdictional transmission issue. Navopache and Mohave suggest replacing the words
26 “transmission import” with “distribution” as a solution. APS suggests deletion of this rule.

27 **Evaluation:** The advent of electric retail competition does not remove, eliminate or
28 diminish the obligation of UDCs to ensure reliable delivery of distribution service to all retail

1 customers. This obligation goes beyond that of Standard Offer Service customers because the
2 UDC is the provider of last resort for all competitive retail consumers as well. The ability of an
3 UDC to meet this obligation is dependent upon the adequacy of its distribution system, local
4 generation and its interconnections with the bulk transmission system. For this reason, reference
5 to transmission import capability is germane to this rule. However, the current rule fails to speak
6 to the obligation of the UDC to provide an adequate distribution system as well.

7 Ensuring such system adequacies are achieved does not imply the UDC bears the full cost
8 for required system improvements. Cost of distribution system improvements is recovered via
9 the UDC's distribution delivery charge. Transmission providers recover transmission system
10 improvement cost via a transmission delivery charge. Such charges may be regulated by different
11 jurisdictional authorities. Nevertheless, the adequate system delivery obligation remains a
12 composite responsibility of the UDC and its interconnected transmission providers.

13 For these reasons, Staff does not agree with suggestions to delete this rule or eliminate its
14 use of the words "transmission import." However, the context of the rule does need to be
15 expanded to include distribution system adequacy obligations of the UDC.

16 **Recommendation:** Change the rule to read as follows:

17 "Utility Distribution Companies shall retain the obligation to assure that
18 adequate transmission import capability and distribution system capacity
19 is available to meet the load requirements of all distribution customers
within their services areas."

20 **1609.D**

21 **Issue:** TEP suggests the replacement of the word "shall" with the word "may" throughout
22 this rule because the AISA should determine what functions it must carryout as circumstances
23 may warrant a change in function over time. This view is also evident in TEP's suggested
24 wording change regarding the functional characteristics of the AISA to be filed with FERC.
25 NWE proposes revised language that would limit the AISA role to that of a monitor or auditor
26 without developing and operating an overarching statewide OASIS. APS echoes such sentiments
27 regarding AISA verifying rather than calculating the Available Transmission Capacity ("ATC")
28 for Arizona transmission facilities.

1 **Evaluation:** The functional characteristics outlined for the AISA in this rule describe
2 what is required to assure non-discriminatory retail access in a robust and efficient electricity
3 market. Reducing or changing such functional characteristics could jeopardize the effective
4 achievement of a fair and non-discriminatory retail market. By filing with FERC, AISA becomes
5 a regulated entity that can not indiscriminately change its functionality.

6 Two stages of development are envisioned for AISA: an initial implementation and an
7 ultimate implementation. The ultimate implementation includes an overarching statewide OASIS
8 system that provides AISA the technical ability to take an active role in the calculation and
9 allocation of the ATC for the Arizona transmission system. This rule by necessity defines a fully
10 developed AISA providing the necessary functional requirements in the absence of an ISO. The
11 pace of an ISO implementation will dictate to what extent the AISA becomes fully developed.
12 Therefore, Staff does not support the language changes suggested by TEP or NWE.

13 **Recommendation:** No change is necessary.

14 **1609.D.5**

15 **Issue:** APS and TEP contend that the transmission planning function required of AISA
16 by this rule is unnecessary, duplicates the efforts of the Southwest Regional Transmission
17 Association (“SWRTA”) and the Western States Coordinating Council (“WSCC”), and should
18 be deleted.

19 **Evaluation:** Affected Utilities historically assumed the responsibility to plan
20 transmission expansion requirements. The SWRTA and WSCC organizations do study the
21 interconnected Extra High Voltage transmission systems capability to perform reliably under
22 various forecast operating conditions. The transmission system analysis functions currently
23 performed by SWRTA and WSCC do not consider transmission alternatives to solve local
24 transmission problems. Nor should one assume the transmission planning function
25 accompanying a regional ISO will address the transmission interface with local UDC distribution
26 systems. However, the inclusion of rule 1609.B. places that obligation with the UDC and its
27 transmission providers. Staff agrees with the APS and TEP assessment that AISA
28 implementation of a transmission planning process is redundant and unnecessary.

1 **Recommendation:** Staff recommends this rule be deleted since rule 1609.B. is
2 understood to place such an obligation with the UDCs and their transmission providers.

3 **1609.E through 1609.G**

4 **Issue:** APS contends that rule 1609.E. is moot and should be deleted since APS has
5 already filed a proposed AISA implementation plan on behalf of itself, AEPCO, TEP, and
6 Citizens. NWE recommends inclusion of language in rule 1609.F. to require a proposed
7 schedule for the phased development of a regional ISO. City of Tucson recommends that rule
8 1609.F. be deleted as the AISA is no longer thought to be forward compatible with a regional
9 ISO. APS wants assurances that the Commission “will” authorize Affected Utilities to recover
10 costs for establishing and operating the AISA or ISO if FERC fails to do so within 90 days of
11 application with FERC.

12 **Evaluation:** Staff agrees that a proposed schedule for the staged development of AISA
13 and its transition to a regional ISO is needed. Therefore, the AISA implementation plan needs to
14 be updated and re-filed with the Commission following adoption of final rules. The cost of
15 organizing and implementing AISA and Desert STAR has been partially assumed by the state’s
16 Affected Utilities. Their timely recovery of such costs is a reasonable expectation. However, the
17 language contained in section G of this rule accommodates such a cost recovery. Therefore,
18 Staff does not support wording changes in section G.

19 **Recommendation:** Make the following language changes to rule 1609.E
20 to require a proposed ISO transition schedule in the AISA implementation
21 plan: “... the schedule for the phased development of Arizona Independent
22 Scheduling Administrator functionality and proposed transition to a
23 regional ISO; ...”

24 **1609.I**

25 **Issue:** NWE recommends removal of language requiring AISA development of protocols
26 for pricing and availability of Must-Run Generating Units, their presentation to the Commission
27 for review and approval prior to filing with FERC, and recovery of such fixed-costs via a
28 regulated charge that is part of the distribution service charge.

1 **Evaluation:** The AISA is developing such protocols and is proceeding to comply with
2 this rule as it is written. Therefore, Staff does not agree with NWE's suggestions to remove
3 portions of this section of the rule.

4 **Recommendation:** No change is necessary.

5 **1609.J**

6 **Issue:** APS suggests deletion of this rule on the basis that the AISA will not address
7 settlement protocols.

8 **Evaluation:** AISA is in fact addressing a variety of protocols that address the settlement
9 process. Ancillary Services, Must-Run Generation, Energy Imbalance, and After-the-Fact
10 Checkout Protocols are being developed by AISA to shape and manage the context of
11 Scheduling Coordinators' expectations of the settlement process. In addition, AISA is to provide
12 the Alternative Dispute Resolution function for the settlement process. Therefore, the rule needs
13 to remain as written.

14 **Recommendation:** No change is necessary.

15 **Former R14-2-1609 "Solar Portfolio Standard"**

16 **Issue:** Photovoltaics International, LLC, encouraged the Commission to retain the Solar
17 Portfolio Standard and went further to say that in selecting a location for its next solar
18 manufacturing plant, it would look for a state with "appropriate encouragements for adoption of
19 solar electricity generation." Similarly, the ACAA, Golden Genesis Company, and Robert
20 Annan recommended the reinstatement or retention of the Solar Portfolio Standard (R14-2-
21 1609). The City of Tucson also recommended that the Solar Portfolio Standard be retained, but
22 indicated that it "... may be desirable to modify the standard to make it more practical, but
23 complete elimination of the solar requirements is poor public policy." The City of Tucson
24 expressed support of the Environmental Portfolio Standard as outlined in Commissioner
25 Kunasek's April 8, 1999, letter "as a substitute for the Solar Portfolio Standard." Tucson
26 suggested that the Environmental Portfolio Standard "be formulated to follow the intent of the
27 Solar Portfolio Standard." The Land and Water Fund of the Rockies ("LAW Fund") also
28 recommended reinstatement of the Solar Portfolio Standard. However, the LAW Fund also

1 applauded the opening of a new docket on an Environmental Portfolio Standard (E-00000A-99-
2 0205), and will participate in the new docket. Finally, the Arizona Solar Energy Industries
3 Association ("ARISEIA") stated that the Solar Portfolio Standard "should have been retained in
4 the Rules." ARISEIA further stated that it supports the new Environmental Portfolio Standard
5 which will "provide significant economic development opportunities, cleaner air and a brighter
6 future for Arizona."

7 **Evaluation:** Staff has been supportive of the Solar Portfolio Standard since its inception
8 in 1996. However, since the Amended Rules approved in Decision No. 61634 on April 23,
9 1999, did not include the Solar Portfolio Standard, it is problematic to attempt to reintroduce the
10 standard at this point in the rule amendment process. To do so would be a "substantive" change
11 in the rules, in Staff's opinion, necessitating a re-commencement of the rule amendment process
12 that might delay the start of competition. Staff believes that delaying the entire rules package
13 would be neither prudent nor wise.

14 Staff does, however, agree with the City of Tucson, the LAW Fund and ARISEIA that
15 the new docket for the Environmental Portfolio Standard, as suggested by Commissioner
16 Kunasek's April 8, 1999, letter is an excellent vehicle to incorporate solar and other clean
17 technologies into the new competitive market. In fact, Staff believes that the Environmental
18 Portfolio Standard process, if promptly handled, and followed by a supplemental rulemaking
19 process, could add Environmental Portfolio Standard rules that could be in effect by January 1,
20 2000.

21 **Recommendation:** Staff recommends no change to the rules at this time, but a
22 continuation of the Environmental Portfolio Standard proceedings.

23 **R14-2-1611 "Rates"**

24 **Issue:** NWE is opposed to the language in R14-2-1611.B regarding the filing of
25 maximum rates on the basis of market setting the price of electric services and in certain cases
26 the maximums may need to be exceeded. NWE also points out that this provision does not
27 establish any time limitations for the Commission to approve such rates.
28

1 **Evaluation:** The filing of maximum rates is an established rate/regulatory practice in
2 Arizona. The Commission has approved maximum rates in conjunction with all ESP
3 applications.

4 **Recommendation:** No change is necessary.

5 **Issue:** NWE is recommending that R-14-2-1611.C be stricken in its entirety since it is an
6 unnecessary remnant of the regulatory regime that Arizona is now abandoning. NWE also states
7 that if a review is required, then the rules should establish strict time limitations for such review,
8 and contracts should be presumptively valid unless disapproved within the established time
9 period and under clear criteria.

10 **Evaluation:** This rule requires only contracts that deviate from a Load Serving Entity's
11 approved tariffs to become effective by Commission order.

12 **Recommendation:** No change is necessary.

13 **Issue:** The City of Tucson recommends that R14-2-1611.C be deleted because it is
14 unclear why competitively negotiated contracts should be treated differently before January 1,
15 2001, than after.

16 **Evaluation:** During the phase-in of competition, the Commission's Utilities Division
17 will monitor the referenced contracts. After January 1, 2001 all customers have access to
18 contracts with competitive suppliers.

19 **Recommendation:** No change is necessary.

20 **Issue:** The City of Tucson recommends that first sentence of R14-2-1611.D be deleted.

21 **Evaluation:** This paragraph affirms the fact that the referenced contracts no longer need
22 to be filed with the Director, Utilities Division on or after January 1, 2001.

23 **Recommendation:** No change is necessary.

24 **Issue:** Trico recommends that word "terms" be replaced by the word "provisions" in the
25 last sentence of R14-2-1611.C because the word "terms" is ambiguous.

26 **Evaluation:** We agree that the word "terms" may be misconstrued to mean the length of
27 the contract and adopt Trico's modification.

28

1 **Recommendation:** Replace the word “terms” with the word “provisions” in the last
2 sentence of R14-2-1611.C.

3 **R14-2-1612 “Service Quality, Consumer Protection, Safety, and Billing Requirements”**

4 **Issue:** Trico recommends that words “each paragraph” be replaced by the words “the
5 applicable provisions” in the last sentence of R14-2-1612.A because in this subsection as well as
6 subsection R14-2-1612.B there are numerous provisions of R14-2-201 through R14-2-212 that
7 are not applicable to ESPs.

8 **Evaluation:** ESPs are subject to all of the provisions of R14-2-201 through R14-2-212.

9 **Recommendation:** No change is necessary.

10 **Issue:** Commonwealth proposed that oral authorization, subject to third party
11 verification, be allowed for the switching of service providers and that R14-2-1612.C be
12 modified accordingly.

13 **Evaluation:** Staff believes a customer’s service provider should not be changed without
14 written consent from the customer. Written authorization minimizes the possibility of being
15 switched to other service providers without customer consent and should not delay the
16 transaction.

17 **Recommendation:** No change is necessary.

18 **Issue:** NWE is recommending that R14-2-1612.E be redrafted to clarify that compliance
19 with applicable reliability standards is the responsibility of the scheduling coordinator, the ISO
20 or the ISA and notification of scheduled outages is the responsibility of the UDC and should not
21 apply to other ESPs.

22 **Evaluation:** ESPs should remain subject to the same applicable reliability standards as
23 UDCs.

24 **Recommendation:** No change is necessary.

25 **Issue:** NWE stated that the provisions found in R14-2-1612.G and H should apply only
26 to UDCs.

27 **Evaluation:** ESPs should remain subject to these provisions as are the UDCs.

28 **Recommendation:** No change is necessary.

1 **Issue:** The City of Tucson has requested some modifications to R14-2-1612.I to clarify
2 the time frames and conditions that a customer that is being served by an ESP may return to
3 Standard Offer Service.

4 **Evaluation:** Staff believes the time frames and the conditions that are included in R14-2-
5 1612.I are necessary and reasonable. Once properly notified by the ESP, the UDC has the
6 responsibility to ensure that the proper metering equipment is in place to serve a customer who is
7 returning to Standard Offer Service. It will be necessary for both the ESP and UDC to
8 coordinate a customer returning to Standard Offer Service through the Termination of Service
9 Agreement Direct Access Service Request (DASR) process.

10 **Recommendation:** No change is necessary.

11 **Issue:** Navopache and Mohave have proposed adding a sentence to R14-2-1612.K that
12 would allow a UDC to recover the costs associated with collecting and distributing the data when
13 UDCs provide metering data to an ESP or customer.

14 **Evaluation:** The UDC has the opportunity to request this type of charge be approved by
15 the Commission as a part of its tariffs.

16 **Recommendation:** No change is necessary.

17 **R14-2-1612.K.1**

18 **Issue:** Navopache and Mohave proposed adding the words “Utility Distribution
19 Companies shall make available to the Customer or Electric Service Provider all metering
20 information and may charge a fee for that service. The charge or fee shall reflect the cost of
21 providing such information.”

22 **Evaluation:** The intent of competition is that a consumer can easily transfer from a
23 UDC to an ESP. This change will hinder the move to competition by making the competitive
24 customer pay higher fees to obtain a competitive supplier.

25 **Recommendation:** No change is necessary.
26
27
28

1 **1612. K.3**

2 **Issue:** At the June 2, 1999 Metering Committee meeting it was proposed that the word
3 “customer” be removed after the word “competitive” and be replaced with “point of delivery”.
4 The Committee also propose deleting the words “for each service delivery point”

5 **Evaluation:** The Metering Committee has previously defined that each point of delivery
6 (POD) be assigned a Universal Node Identifier. A customer could have more than one POD, so
7 a Universal Node Identifier must be assigned to each POD.

8 **Recommendation:** Use the wording developed by the Metering Committee.

9 **1612.K.4**

10 **Issue:** NWE proposed deleting the words “standards approved by the Utility Industry
11 Group (UIG) that can be used by the Affected Utility or the Utility Distribution Company and
12 the Electric Service Provider.” and replacing them with “UIG standards in effect at least 60 days
13 before the onset of competition.”

14 **Evaluation:** The use of Electronic Data Interchange formats approved by UIG has been
15 discussed by the Metering Committee and all formats that are being used were already in effect
16 earlier this year.

17 **Recommendation:** No change is necessary.

18 **1612.K.6**

19 **Issue:** TEP proposed deleting the words “Predictable loads will be permitted to use load
20 profiles to satisfy the requirement of hourly consumption data.” TEP and APS proposed
21 deleting the words “Affected Utility or Electric Service Provider will make the determination”.
22 TEP also proposed deleting the words “will make the determination if a load is predictable.”
23 APS proposes adding the words “entity developing the load profile shall determine”.

24 **Evaluation:** The Energy Service Providers and UDCs are responsible for developing the
25 load profiles for their respective customers. If they do not estimate the load profile correctly, the
26 AISA will require them to pay scheduling penalties. Staff believes that APS’ proposed language
27 appropriately clarifies where this responsibility resides.

28 **Recommendation:** APS’ wording should be used.

1 **1612.K.6 and 1612.K.7**

2 **Issue:** Commonwealth proposed that instead of using a 20 kW and 100,000 kWh limit
3 for hourly interval meters that a limit of 50 kW and 250,000 kWh be used for the use of hourly
4 interval meters. The City of Tucson proposes that the 20 kW demand threshold be re-evaluated.

5 **Evaluation:** Customers over 20 kW do not have easily predictable load profiles and use
6 of load profiling for such customers can result in higher scheduling errors and cause the UDCs
7 and the ESPs to pay scheduling penalties which would be passed on to both the Standard Offer
8 and competitive consumers. The lower limit would reduce scheduling errors and result in lower
9 costs to the Standard Offer and competitive customers.

10 **Recommendation:** No change is necessary.

11 **Issue:** NWE recommends that R14-2-1612.M be stricken in its entirety because the
12 Electric Power Competition Act requires substantial statewide consumer outreach and education
13 and further informational programs by ESPs is unnecessary.

14 **Evaluation:** The Commission has a duty to ensure that all customers throughout the
15 state are well informed regarding electric competition.

16 **Recommendation:** No change is necessary.

17 **Issue:** Trico, Navopache and Mohave recommend that the language in R14-2-1612.N be
18 modified to clarify that UDC is not required to segregate Wholesale Power Contract bills which
19 combine generation and transmission services.

20 **Evaluation:** The Commission recognizes that distribution cooperatives may not have the
21 ability to segregate Wholesale Power Contract bills which bundle generation and transmission
22 services. These distribution cooperatives would need to seek a waiver from this rule.

23 **Recommendation:** No change is necessary.

24 **Issue:** NWE states that if an ESP is mandated through R14-2-1612.N to provide the
25 listed information on their billing statements, then Affected Utilities and UDCs should be
26 mandated to provide such information that is in their control to the ESP in order to permit the
27 ESP to meet its requirements.
28

1 **Evaluation:** The billing entity will be responsible for providing this information on
2 customers bills. The billing entity for direct access customers will be responsible for
3 coordinating with UDCs, ESPs, and Meter Reader Service Providers to provide this information.

4 **Recommendation:** No change is necessary.

5 **R14-2-1613 “Reporting Requirements”**

6 **Issue:** NWE recommends that the entire section be deleted. This recommendation is
7 based on NWE’s perception that the reporting requirements are regulatory in nature with no pro-
8 competitive justification for them and that the rule will harm consumers by raising costs, as ESPs
9 are forced to hire employees whose sole purpose is to fulfill these reporting requirements. TEP
10 questions the need for the amount of information required to be provided in the rule. TEP
11 contends that the amount of information will be difficult to compile and increase the costs that,
12 ultimately, customers will be required to pay.

13 **Evaluation:** The reporting requirements section is necessary for the Commission to
14 monitor and determine that the bond and insurance coverage amounts are adequate to meet
15 customer protection concerns including customer deposits and advances. The reports required
16 by this rule will furnish the Commission with valuable information in assessing the
17 competitiveness of the electricity market in Arizona.

18 **Recommendation:** No change is necessary.

19 **R14-2-1614 “Administrative Requirements”**

20 **1614.A., B. and C.**

21 **Issue:** NWE repeats its suggestion that there should be no requirement to file maximum
22 rates. NWE proposes to delete sections A, B, and C.

23 **Evaluation:** ESPs are public service corporations, for whom the Commission is lawfully
24 authorized to establish just and reasonable rates. The filing of maximum rates, subject to
25 discount, and the filing of contracts, are the means by which the Commission has decided to
26 exercise its jurisdiction.

27 **Recommendation:** No change is necessary.

28

1 **1614.E**

2 **Issue:** ACAA suggests additional language which would further define specifics
3 surrounding the Consumer Education Plan. ACAA would have the rule specifically reference
4 adoption of a funding plan, specify that the adopted consumer education plan is to be a model
5 and require Affected Utilities to conform to the adopted plan.

6 **Evaluation:** The rule as currently written will accommodate the concerns addressed by
7 ACAA.

8 **Recommendation:** No change is necessary.

9 **R14-2-1615 “Separation of Monopoly and Competitive Services”**

10 **Issue:** APS argues that the separation from the UDC of metering, meter reading, billing,
11 and collection required by R14-2-1615 is not necessary, appropriate, or to the benefit of
12 consumers or the competitive market. APS proposes amending R14-2-1615 to allow UDCs to
13 offer non-generation related competitive services without divesting such functions to affiliates.

14 **Evaluation:** Affected Utilities, such as APS, have substantial market power by virtue of
15 their status as incumbent monopolists. The prospective competitive market will benefit by rules
16 that seek to create a level playing field for new market entrants so that competitors will have an
17 incentive to enter the market.

18 **Recommendation:** No change is necessary.

19 **Issue:** R14-2-1615.B.1 recognizes that UDCs may provide meters for load profiled
20 customers. APS proposes clarifying this rule by substituting the phrase “meter services and
21 meter reading services” for the word “meters.”

22 **Evaluation:** APS’ proposal uses terms that have definitions in place of an undefined
23 term. Staff supports APS’ proposal.

24 **Recommendation:** Delete “meters” and replace with “meter services and meter reading
25 services.”

26 **Issue:** R14-2-1615 requires all competitive generation and Competitive Services to be
27 separated from an Affected Utility prior to January 1, 2001: such separation shall either be to an
28 unaffiliated party or to a separate corporate affiliate or affiliates. Commonwealth asserts that all

1 generation assets, except for must run units, should be sold at market value to third parties.
2 Commonwealth also suggests that an Affected Utility's affiliate should be precluded from
3 acquiring general assets unless it is the highest bidder at auction. Commonwealth believes that,
4 without the requirement of a sale at market value, the UDCs will be able to manipulate values
5 and shift costs from competitive services to noncompetitive services.

6 **Evaluation:** Commonwealth's proposal to require generation assets to be divested
7 through a market auction is in direct conflict with Decision No. 61677, the Commission's
8 Stranded Cost order, which treats divestiture as an option, not a requirement. Pursuant to R14-2-
9 1615.A, the asset transfer shall be at a value determined by the Commission to be fair and
10 reasonable. Accordingly, the asset transfer will not occur outside of Commission oversight.
11 Finally, Commonwealth's concerns regarding cost shifting between UDCs and their affiliates
12 may be addressed through the code of conduct required by R14-2-1616 and through subsequent
13 UDC rate cases governing noncompetitive services.

14 **Recommendation:** No change is necessary.

15 **Issue:** R14-2-1615.A requires all competitive generation assets to be separated from
16 Affected Utilities by January 1, 2001. Commonwealth asserts that rule R14-2-1615.A should be
17 clarified; specifically, it suggests deleting the word "competitive", and thereby requiring all
18 generation assets except for must run-units to be separated from Affected Utilities prior to
19 January 1, 2001.

20 **Evaluation:** The definition of "noncompetitive services" clearly excludes generation
21 services, except for must-run units. It is therefore clear that competitive generation includes all
22 generation except for must run units.

23 **Recommendation:** No change is necessary.

24 **Issue:** R14-2-1615.A requires Affected Utilities to transfer their generation assets by
25 January 1, 2001. TEP suggests changing this date to January 1, 2003 to accommodate lease and
26 bond restrictions that may interfere with TEP's ability to comply with the 2001 deadline.

27 **Evaluation:** The rules already provide an avenue in which a public service corporation
28 may request a waiver to the rules. While TEP's individual circumstances may justify a case-

1 specific waiver from the proposed deadline, these circumstances do not justify an amendment to
2 the rules.

3 **Recommendation:** No change is necessary.

4 **Issue:** R14-2-1615.A allows Affected Utilities to transfer competitive generation assets
5 to affiliates. TEP suggests adding the word “subsidiary” because it believes that transfer to a
6 subsidiary may under some circumstances be less costly than transfer to an affiliate.

7 **Evaluation:** In Decision No. 61669, the Commission clearly indicated its intent to
8 require transfer to an affiliate, instead of a subsidiary. TEP’s suggestion conflicts with the
9 Commission’s clearly established intent.

10 **Recommendation:** No change is necessary.

11 **Issue:** R14-2-1615.C allows distribution cooperatives to provide competitive electric
12 services in areas in which they currently provide service. AEPCO, Duncan, Graham, and Trico
13 suggest amending this rule to allow the distribution cooperatives to provide competitive services
14 in any areas in which they will be providing noncompetitive services now or in the future.

15 **Evaluation:** R14-2-1615.C was intended to allow distribution cooperatives to provide
16 competitive services within areas in which they are providing distribution services. Because
17 distribution service territories change, it is sensible to draft the rule in a manner that recognizes
18 this.

19 **Recommendation:** In R14-2-1615.C, delete the phrase “the service territory it had as of
20 the effective date of these rules” and replace it with “its distribution service territory.”

21 **Issue:** R14-2-1615.C states that a generation cooperative shall be subject to the same
22 limitations to which its member cooperatives are subject. AEPCO argues that a generation
23 cooperative, such as AEPCO, does not have a geographic service territory and does not have
24 distribution customers. AEPCO further argues that, because it is not a distribution cooperative, it
25 is not eligible for the exemption contained in R14-2-1615.C. Therefore, it is subject to all the
26 requirements contained in R14-2-1615.A and –1615.B. AEPCO therefore recommends deleting
27 the last sentence of 1615.C

28 **Evaluation:** Staff agrees with AEPCO.

1 **Recommendation:** Delete the final sentence of R14-2-1615.C.

2 **R14-2-1616 “Code of Conduct” (replaces R14-2-1617 “Affiliate Transactions”)**

3 **Issue:** Commonwealth, The City of Tucson, ASARCO Incorporated, Cyprus Climax
4 Metals Company, Arizonans for Electric Choice and Competition (“AECC”) and Enron oppose
5 the Commission’s elimination of the Affiliate Transaction rules (formerly R14-2-1617). AECC
6 joins in and fully supports the separately filed comments of Enron Corp. and submits that the
7 Electric Competition Rules must contain Affiliate Transaction rules to provide consumers
8 appropriate safeguards in the competitive marketplace. Enron claims that the Affiliate
9 Transaction rules should be designed to prevent Affected Utilities from abusing or unfairly
10 exerting market power due to their inherent and historical monopoly positions in Arizona. At a
11 minimum Enron indicates that the above concerns are reduced if Affected Utilities and their
12 marketing affiliates are required to operate as separate corporate entities keeping separate books
13 and records. Enron indicates that market power concerns have been heightened recently because
14 of the Commission’s approach to Stranded Costs which does not require Affected Utilities to
15 divest generation assets, thereby leaving Affected utilities with tremendous competitive
16 advantage and market power. Enron identifies the potential absence of uniformity among the
17 Affected Utilities’ codes of conduct as a problem resulting in the ESPs having to guess which
18 types of activities are allowed for each individual Affected Utility and its affiliates.
19 Commonwealth recommends that the code of conduct should preclude any Affected Utility from
20 offering competitive services through an affiliate until a code of conduct has been approved by
21 the Commission, after notice, comment, and hearing. The City of Tucson urges the Commission
22 to promulgate Affiliate Transaction rules with sufficient detail to assure the public that there is
23 adequate Commission oversight of these relationships. Commonwealth states that the code of
24 conduct should not displace Affiliate Transaction rules or guidelines. Commonwealth suggests
25 that, if the Affiliate Transactions rule is not reinserted back into the rules, an alternative seven
26 pages of guidelines for Affected Utilities and their competitive affiliates should be incorporated
27 within the codes of conduct of each Affected Utility.

28

1 **Evaluation:** Nearly all parties providing comments on this issue suggest that the entire
2 Affiliate Transactions rule (formerly R14-2-1617) be reinserted back into the proposed rules.
3 Others suggest rewriting the current code of conduct, R14-2-1616, to include specific appropriate
4 Affiliate Transactions rules. A code of conduct for Affected Utilities and their affiliates is
5 necessary in order to ensure the development of a robust competitive market. Staff believes that,
6 while it is not essential for all Affected Utilities to have identical codes of conduct, it is desirable
7 for each code of conduct to address certain significant issues. In the absence of some minimal
8 degree of uniformity, parties will be uncertain as to the rules governing the Arizona market, and
9 enforcement of these issues will be difficult. Staff therefore supports amending R14-2-1616 to
10 require each Affected Utility to address certain minimum standards in its code of conduct.

11 **Recommendation:** Staff recommends making the following changes to R14-2-1616:

12 No later than 90 days after adoption of these Rules, each Affected Utility
13 which plans to offer Noncompetitive Services and which plans to offer
14 Competitive Services through its competitive electric affiliate shall
15 propose a code of conduct to prevent anti-competitive activities. Each
16 Affected Utility that is an electric cooperative, that plans to offer
17 Noncompetitive Services, and that is a member of any electric cooperative
18 that plans to offer Competitive Services shall also submit a code of
19 conduct to prevent anti-competitive activities. All ~~The~~ codes of conduct
20 shall be subject to Commission approval.

21 The code of conduct shall address the following subjects:

- 22 1. Appropriate procedures to prevent cross subsidization between the Utility
23 Distribution Company and any competitive affiliates;
- 24 2. Appropriate procedures to ensure that the Utility Distribution Company's
25 competitive affiliate does not have access to confidential utility information
26 that is not also available to other market participants;
- 27 3. Appropriate guidelines to limit the joint employment of personnel by both a
28 Utility Distribution Company and its competitive affiliate;
4. Appropriate guidelines to govern the use of the Utility Distribution
 Company's name or logo by the Utility Distribution Company's competitive
 affiliate;
5. Appropriate procedures to ensure that the Utility Distribution Company does
 not give its competitive affiliate any unreasonably preferential treatment such
 that other market participants are unfairly disadvantaged;
6. Appropriate policies to eliminate joint advertising, joint marketing, or joint
 sales by a Utility Distribution Company and its competitive affiliate;

1 7. Appropriate procedures to govern transactions between a Utility Distribution
2 Company and its competitive affiliate; and

3 8. Appropriate policies to prevent the Utility Distribution Company and its
4 competitive affiliate from representing that customers will receive better
5 service as a result of the affiliation.

6 **R14-2-1617 "Disclosure of Information"**

7 **Issue:** NWE and TEP have proposed that the entire section be deleted. APS proposed
8 that only load-serving ESPs disclose information to consumers; Utility Distribution Companies
9 should not have to. Trico proposed that a new section be added stating that the Utility
10 Distribution Company would not be required to furnish the same information as provided by a
11 Load-Serving Entity. ACAA proposed that information about the resource mix be readily
12 available to residential consumers without any acquisition barriers. The City of Tucson
13 expressed concern that the proposed rule provides for information about the resource portfolio to
14 be provided only upon request and stated that experience in other states has shown that
15 consumers "prefer a more environmentally sound mix of resources than traditional suppliers
16 have in their portfolios." The City of Tucson believes that since the information would have to
17 be developed in case someone requested it, the only rationale for not providing it automatically
18 would be to hide the resource mix. The Land and Water Fund of the Rockies pointed out that by
19 not requiring disclosure about resources, Arizona consumers will be not be informed about their
20 choices and will be at a disadvantage in comparison to those in other western states. In addition,
21 Commonwealth proposed that the word "written" be deleted from R14-2-1617.G.2 because
22 customer authorizations should not have to be written.

23 **Evaluation:** Consumers are entitled to receive information so that they can make
24 informed choices. Research has been conducted in other states that indicates consumers want
25 information on generation resources. Utility Distribution Companies providing Standard Offer
26 Service should be required to disclose the information so that consumers can make comparisons.
27 Generation resource information should be required to be part of the consumer information label
28 and not just provided upon request. It is unlikely for there to be very much duplication of
information from ESPs and Utility Distribution Companies, but the intent was for entities
providing generation service either as an ESP or through Standard Offer Service to provide

1 information on generation resources. Staff believes a customer's service provider should not be
2 changed without written consent from the customer. Written authorization minimizes the
3 possibility of being switched to other service providers without customer consent.

4 **Recommendation:** Restore subsections R14-2-1617.A.4, 5 and 6, and delete R14-2-
5 1617.B. Insert "providing either generation service or Standard Offer Service" after "Load-
6 Serving Entity" in R14-2-1617.A. No changes are necessary to the requirement of written
7 consent prior to the switching of service providers.

8 RESPECTFULLY SUBMITTED this 4th day of June, 1999.

9
10 By: Paul A Bullis
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15 Original and ten copies of the
16 foregoing filed this 4th day
17 of June, 1999 with:

18 Docket Control
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 A copy of the foregoing was
23 mailed this 4th day of June,
24 1999 to:

25 All parties on the service list for
26 Docket No. RE-00000C-94-0165

27 By: Mary Ippolito
28