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

Docket No. RE-00000C-94-0165

Arizona Corporation Commission

DOCKETED

SEP 07 1999

**EXCEPTIONS OF ENRON CORP. TO  
RECOMMENDATION OF HEARING OFFICER**

In the notice issued in the above-captioned docket on August 26, 1999

DOCKETED BY  
ME

Arizona Corporation Commission ("Commission") invited interested parties to file exceptions to the Recommendation of the Hearing Officer in the form of an Opinion and Order on electric competition rules. Enron Corp. files these exceptions pursuant to the August 26 notice.

**Exception No. 1: New Section R14-2-1616A.1 should require that the UDC and its affiliate maintain separate books, accounts and records.**

R14-2-1606A.1 requires the Utility Distribution Company ("UDC") to address appropriate procedures to prevent cross-subsidization between the UDC and any competitive affiliates. This section should be revised to add to the end of the sentence the following phrase, "including but not limited to the maintenance of separate books, records and accounts." This specific requirement will aid in the prevention and identification of cross subsidization and should be a requirement that the UDC comply

1 with. Separate books, accounts and records also aids in the prevention of information  
2 sharing and preferential treatment.

3 **Exception No. 2: New Section R14-2-1616A.5 does not adequately protect market**  
4 **participants from preferential treatment afforded a UDC affiliate.**

5  
6 New Section R14-2-1616A.5 states that the code of conduct shall address  
7 “appropriate procedures to ensure that the Utility Distribution Company does not give its  
8 competitive affiliate any unreasonable preferential treatment such that other market  
9 participants are unfairly disadvantaged.” Enron submits that two changes are needed to  
10 the language of this section. First, the word “unreasonable” should be deleted as a  
11 modifier to the phrase “preferential treatment.” Any preferential treatment should be  
12 prohibited. The possibility that the UDC would grant preferential treatment to its affiliate  
13 should not be countenanced on the theory that the UDC will argue that that treatment was  
14 “reasonable.” This loophole should be closed.

15 The second change to the provision which should be made is to add to the end the  
16 phrase “or discriminated against.” This would ensure that other market participants are  
17 not only not unfairly disadvantaged or discriminated against. This covers a broader range  
18 of potential harm and again closes a loophole that UDCs might attempt to use to justify  
19 preferential treatment to an affiliate.

20 **Exception No. 3: New Section R14-2-1606 should contain provisions which establish**  
21 **an audit requirement.**

22  
23 Enron recommends that the Commission add a new paragraph 9 to read:

- 24 9. Compliance Audit: No later than one year after promulgation  
25 of this Code of Conduct, and at a minimum, every third year  
26 thereafter, the Utility Distribution Company shall have an audit  
27 prepared by independent auditors that verifies that the UDC is  
28 in compliance with the Code. The UDC shall file this audit  
29 with the Board no later than one year after promulgation of this

1 Code, and serve it on all parties to this proceeding. The audits  
2 shall be a shareholder expense.

3  
4 This Section would require regular audits to ensure that the UDC is in compliance with  
5 the Code of Conduct and gives the Commission and parties a tool to monitor activities  
6 and have a formal way of assessing compliance.

7 **Exception No. 4: New Section R14-2-1606 should contain provisions which require**  
8 **the UDC to establish a complaint procedure.**

9  
10 A new paragraph 10 should be included in R14-2-1606.A which reads as follows:

11 10. UDCs shall establish and file a complaint procedure as part of its  
12 tariff. All complaints, written or verbal, shall be referred to a  
13 designated officer of the UDC. The designated officer shall  
14 acknowledge such complaint within 5 working days of receipt. The  
15 designated officer shall prepare a written statement of the complaint  
16 which shall contain the name of the complainant and a detailed factual  
17 report of the complaint, including all relevant dates, companies  
18 involved, employees involved, and the specific claim. The designated  
19 officer shall provide a copy of the statement to the complainant and  
20 shall communicate the results of the preliminary investigation to the  
21 complainant in writing within 30 days after the complaint was  
22 received, including a description of any course of action which will be  
23 taken. In the event the UDC and the complainant are unable to resolve  
24 the complaint, the complainant may address the complaint to the  
25 Commission. If the Commission determines that probable cause exists  
26 for the complaint, it shall order a hearing, give notice and conduct the  
27 hearing as it would any other hearing.

28  
29 The Federal Energy Regulatory Commission has included this requirement in its standard  
30 of conduct. This utility-based complaint process allows the utility manage problems and  
31 keeps complaints that might easily be resolved from clogging the Commission's dockets.

32 **Exception No. 5: New Section R14-2-1606 should contain provisions which require**  
33 **the UDC to maintain complaint and transaction logs.**

34  
35 Enron submits that a new subparagraph 11 should be added which read:

36  
37 11. Each UDC shall maintain a log of all new, resolved and pending  
38 complaints. The complaint log shall include a written statement of the  
39 complaint and the resolution of the complaint or an explanation why

1 the complaint is still pending. A separate log of each request for  
2 service, including the date of the request, the name of the requestor,  
3 action or disposition of the request and date action was taken, and a  
4 description of any waivers or discounts granted shall also be  
5 maintained by the UDC. The logs shall be available to the public upon  
6 request and shall be filed annually with the Commission.

7  
8 Maintenance of logs have been required at the FERC. They create a trail that enables the  
9 Commission and other interested parties to detect code violations or patterns of  
10 pernicious behavior that might otherwise go undetected.

11 **Exception No. 6: New Section R14-2-1606 should contain provisions which**  
12 **establishes penalties for violations of Code of Conduct provisions.**

13  
14 Enron submits a new subparagraph 12 should be to added to R14-2-1606 which  
15 reads:

16  
17 12. In addition to other penalties available, the Commission may (i)  
18 terminate the transaction complained of; (ii) prospectively limit or  
19 restrict the amount, percentage, or value of transactions entered into  
20 between a UDC and its affiliates as a remedy for a violation of the  
21 code of conduct; (iii) assess penalties, or (iv) apply any other remedy  
22 available to the Commission. For each violation, the UDC will be  
23 required to place in one monthly billing packet a notice, written by the  
24 Commission, which informs the public of the substance of the  
25 violation and explains how similar violations can be reported by  
26 members of the public.

27  
28 Unless there are clear penalties in place for code of conduct violations, the effectiveness  
29 of the code is undermined. Without meaningful consequences, the UDCs can ignore the  
30 code at their pleasure. The penalty provisions we have proposed would give the UDC the  
31 knowledge that violations will be followed by some form of appropriate redress.

32 **Exception No. 7: The reporting requirements in Section R14-2-1613 are overly**  
33 **broad and will require ESPs to submit competitively sensitive information and**  
34 **information which is either not available or would be costly to provide.**

35  
36 Much of the information required to be reported in Section R14-1-1613 is  
37 troublesome to us. It seems to require companies that do business in what we hope will

1 be a very competitive environment to reveal their products and earnings to their  
2 competitors. These types of information are typically not put in the public domain.  
3 Additionally, the reporting requirements impose significant costs to the holders of  
4 certificates of convenience and necessity ("CCN"), which they will have to recover from  
5 their customers in the form of higher prices and which may create economic barriers to  
6 entry. Reporting requirements should be restricted to such information which is  
7 rationally related to the Commission's actual need-to-know in order to perform its duties.

8 Section R14-1-1613A.4 mandates the reporting of the number of customers  
9 disaggregated by class and load. While this information may be useful to determine the  
10 level of competition occurring, to require each CCN holder to report it is inefficient. The  
11 utility should have this information as it needs this information to properly design rates  
12 for non-competitive services, and it is already recovering the cost to capture this  
13 information in its rates. Thus, the Commission should obtain this information directly  
14 from the utility and not the other CCN holders.

15 Section R14-2-1613A.6 requires the holder of a CCN to file a report which  
16 includes the amounts of revenues from each type of Competitive Service, and if  
17 applicable, each type of Noncompetitive Service provided. At least in the way a marketer  
18 would normally do business, offering a bundled service at a bundled price to a customer,  
19 information would not be maintained in this manner. The cost to set up an accounting  
20 and tracking system to break revenues down in the way required would present a  
21 significant financial obstacle to marketers. Similarly, the requirement in R14-2-1613A.7  
22 that the CCN holder report the value of all assets used to serve Arizona customers and  
23 accumulated depreciation would also require ESPs to record and track data in a way that

1 it would not normally do. For a company such as Enron, with personnel and assets  
2 spread across several states and different offices, it would be an extremely difficult  
3 calculation. Resources would not be differentiated by state but would serve numerous  
4 markets in a number of states. To report this data, again, would be a severe burden on the  
5 ESPs and would have a chilling effect on their interest and ability to compete.

6 An additional concern that Enron has is that much of the information to be  
7 reported under Section 1613 is competitively sensitive. It is not the type of information  
8 we would want our competitors to see. We also question the usefulness or relevancy of  
9 much of this information to the ACC. For example, Section 1613A.5 requires the holder  
10 of the CCN to report retail kWh sales and revenues disaggregated by contract term. We  
11 cannot see that this information would have any meaning to the Commission. Contracts  
12 may contain rollover provisions or extensions or early termination provisions which may  
13 be exercised by one or the other party. Knowing the sales and revenues attributable to  
14 certain term contracts would not seem a particularly useful bit of information for the  
15 Commission to have, but it would put a burden on the ESP or other CCN holder to  
16 capture and report. The same arguments would apply to the revenues for sales from  
17 customer class required by Section 1613.A.3. The requirement in 1613A.1 that reports  
18 include the types of services offered by the CCN holder also could force an ESP to reveal  
19 competitively sensitive information to the Commission and its competitors. We urge the  
20 Commission to reconsider the reporting requirements and to limit itself to collecting  
21 information that serves a clear purpose from the regulatory perspective of the  
22 Commission and that does not impose undue expense or effort on the part of the CCN

1 holders. In the end, the cost of the reporting finds its way into the prices the customers  
2 pay.

3 **Exception No. 8: Section R14-2-1617D imposes an impermissible burden on**  
4 **interstate commerce.**

5  
6 This Section states that each Load-Serving Entity shall include certain  
7 information on written materials specifically targeted to Arizona. Enron would not  
8 oppose that requirement. However, when a Load-Serving Entity advertises in non-print  
9 media, or in written materials not specifically targeted to Arizona, the rule requires that  
10 the Load-Serving Entity indicate that it will provide the consumer information upon  
11 request. This imposes Arizona standards on marketing materials which may be directed  
12 to markets located thousands of miles away. If each state could impose upon a Load-  
13 Serving Entity its own version of consumer protection and require that all marketing  
14 materials in all locations meet those requirements, the Load-Serving Entities would be  
15 like deer caught in a headlight. The disclaimers and conforming language requirements  
16 could eclipse the advertising. In interstate commerce matters such as this, the state and  
17 its agencies cannot place burdens on interstate commerce. The disclosure requirement in  
18 this section is far too broad and should be tailored to materials addressed to Arizona  
19 consumers.

20 **Exception No. 9: The language and revisions to Section R14-2-1612K need to be**  
21 **clarified.**

22  
23 In 1612K.1, an ESP who provides metering or meter reading services pertaining  
24 to a particular customer shall provide **access** using EDI formats to meter reading data to  
25 other ESPs who would serve that customer. This language leads one to believe that the  
26 metering or meter-reading ESP must give other ESPs direct access to the meter. We do

1 not think that this is the intent of that section, and it would be more clear if the section  
2 read “When authorized by the consumer, an Electric Service Provider who provides  
3 metering or meter reading services pertaining to a particular customer shall provide  
4 appropriate meter reading data via standardized EDI formats to all applicable Electric  
5 Service Providers serving that same consumer”.

6 In Section 1612.K.6, predictable loads will be permitted to use load profiles to  
7 satisfy the requirements for hourly consumption data. Enron supports the expanded use  
8 of load profiles whenever possible to minimize competitive barriers in the form of  
9 unnecessary additional costs to direct access customers. In implementing load profiles,  
10 there should be no requirement to true-up the actual usage on an hourly basis with the  
11 usage deemed for each hour based on total usage and application of the load profile. Any  
12 actual differences will be absorbed as unaccounted-for energy (negative or positive) by  
13 all customers. To require a retrospective true-up for each customer would require the  
14 installation of an hourly interval meter, which defeats the purpose of this rule. The  
15 application of load profiles must be determined on a prospective basis, in general and for  
16 each specific customer. Hence, an entity such as the utility must determine reasonable  
17 load profiles to be approved by the Commission for customers whether they choose  
18 Standard Offer or Direct Access service. Load profiles can be updated on a periodic,  
19 going-forward basis. Once Commission-approved load profiles or load profiling  
20 methodologies have been adopted, a set of applicable criteria to determine which  
21 customers may use those load profiles must be established. This criteria should be set  
22 through these Competition Rules or through a separate Commission determination of the  
23 applicable load profiles or methodologies. Again, this criteria cannot rely on hourly load

1 data for a specific customer, as this defeats the purpose of the rule, but it should use  
2 general load data for a representative customer.

3 The rule should clarify what is meant by a predictable load, how load profiles will  
4 be determined, and whether this provision applies equally to ESPs and utilities. It should  
5 also clarify that this section would not prohibit the ESP from installing interval reading  
6 devices.

7 Finally, Section 1612.K.7 permits competitive customers with hourly loads of 20  
8 kW (or 100,000 kWh annually) or less will be permitted to use Load Profiling to satisfy  
9 the hourly consumption data requirements. The Commission must clarify how ESPs and  
10 customers will know whether or not they fall into this category.

11 WHEREFORE, in light of the foregoing discussion, Enron respectfully requests  
12 that the Commission modify and clarify the competition rules to incorporate the language  
13 proposed by Enron.

14 Dated: Sept. 4, 1999

Respectfully submitted,

15 **ENRON CORP.**

16  
17  
18 **By:**   
19 Leslie J. Lawner  
20 Director, Government Affairs  
21 Enron Corp.  
22 712 N. Lea  
23 Roswell, NM 88201  
24 (505) 623-6778

25  
26  
27 THE ORIGINAL AND 10 COPIES OF THE FOREGOING DOCUMENT WERE SENT BY  
28 OVERNIGHT MAIL ON SEPT.4, 1999 TO

29  
30 Docket Control  
31 Arizona Corporation Commission  
32 1200 W. Washington St.  
33 Phoenix, Arizona 85007  
34

1 A COPY OF THE FOREGOING WAS SENT BY FIRST CLASS MAIL ON Sept. 4, 1999 TO:

2  
3 Chairman Carl Kunasek  
4 Arizona Corporation Commission  
5 1200 West Washington St.  
6 Phoenix, AZ 85007

7  
8 Commissioner Jim Irvin  
9 Arizona Corporation Commission  
10 1200 West Washington St.  
11 Phoenix, AZ 85007

12  
13 Commissioner William Mundell  
14 Arizona Corporation Commission  
15 1200 West Washington St.  
16 Phoenix, AZ 85007

17  
18 Jerry L. Rudibaugh, Chief Hearing Officer  
19 Hearing Division  
20 Arizona Corporation Commission  
21 1200 West Washington St.  
22 Phoenix, AZ 85007

23  
24 Paul Bullis, Chief Counsel  
25 Christopher C. Kempley, Esq.  
26 Legal Division  
27 Arizona Corporation Commission  
28 1200 West Washington St.  
29 Phoenix, AZ 85007

30  
31 Ray Williamson, Acting Director  
32 Utilities Division  
33 Arizona Corporation Commission  
34 1200 West Washington St.  
35 Phoenix, AZ 85007

36  
37  
38  
39 By   
40 Leslie J. Lawner,  
41 Director, Government Affairs  
42 Enron Corp.

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44  
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