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Barbara A. Klemstine
Manager
Regulatory Affairs

Tel 602/250-2031
Fax 602/250-3399
e-mail: bklemsti@apsc.com
<http://www.apsc.com>



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October 19, 1999

Docket Control
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

AZ CORP COMMISSION
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RE: APPLICATION BY ARIZONA PUBLIC SERVICE COMPANY FOR REHEARING AND/OR
RECONSIDERATION OF DECISION NO. 61969
DOCKET NO. RE-00000C-94-0165

Dear Sir or Madam:

Attached please find Arizona Public Service Company's Application for Rehearing and/or Reconsideration of Decision No. 61969. Although APS encourages the Commission to consider its comments on the rule amendments in Section II of the Application, the primary purpose of this filing is simply to preserve APS's legal remedies regarding the Electric Competition Rules.

If you have any questions regarding this filing, please give me a call at (602)250-2031.

Sincerely,

Barbara A. Klemstine
Manager
Regulatory Affairs

Cc: Docket Control (Original plus 10 copies)
All Parties of Record

Arizona Corporation Commission

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OCT 19 1999

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BEFORE THE ARIZONA CORPORATION COMMISSION

1999 OCT 19 P 5:00

CARL J. KUNASEK
Chairman

JIM IRVIN
Commissioner

WILLIAM A. MUNDELL
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

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

DOCKET NO. RE-00000C-94-0165

APPLICATION BY ARIZONA PUBLIC SERVICE
COMPANY FOR REHEARING AND/OR RECONSIDERATION OF
DECISION NO. 61969

Arizona Public Service Company ("APS" or "Company") hereby submits its Application for Rehearing and/or Reconsideration ("Application") of Decision No. 61969 (September 29, 1999) ("Decision No. 61969" or the "Decision"). In filing such an Application, APS is fully aware that the Arizona Corporation Commission ("Commission") has entered into and approved a settlement agreement ("Agreement") in Decision No. 61973 (October 6, 1999), which Agreement contemplated the eventual dismissal by APS of pending litigation over the Commission's retail electric competition rules. APS's Application does not in any way abrogate that Agreement, but merely brings to the attention of the Commission certain deficiencies in the rules, as is the Company's right as a long-time participant in these proceedings, as well as preserves the Company's legal rights. APS supports the Commission's goal of retail electric competition and believes that the changes proposed by the Application can only further that goal.

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**I.
INTRODUCTION**

In Decision No. 61969, the Commission adopted amendments to existing administrative rules dealing with the provision of competitive retail electric service in Arizona (“Electric Competition Rules”). The amendments to the Electric Competition Rules and therefore Decision No. 61969 are unreasonable and unlawful for each of the reasons set forth herein. APS therefore respectfully requests that the Commission enter an order or orders: (1) granting rehearing and vacating Decision No. 61969; (2) adopting the proposed revisions to the rules set forth herein and in APS’ September 7, 1999 exceptions, which are incorporated herein by reference; and (3) complying with the Arizona Administrative Procedure Act, state law, and the Arizona and United States Constitutions in subsequent proceedings. APS also incorporates by reference its Rehearing Applications for Decision No. 59943, Decision No. 61071, and Decision No. 61272, addressing earlier versions of the Electric Competition Rules.

**II.
MODIFICATIONS TO THE
ELECTRIC COMPETITION RULES**

APS requests that the Commission substantively modify a number of provisions of the Electric Competition Rules. Although set forth more fully in APS’s September 7, 1999 Exceptions and the specific proposed rules changes in Exhibit A thereto, the provisions that APS asks the Commission to revise are:

(1) The definition of the term “Competitive Services” in Rule R14-2-1601(7) is vague and ambiguous because it essentially includes any aspect of retail electric service that is not defined as a “noncompetitive service.” The Electric Competition Rules prohibit Utility Distribution Companies (“UDCs”) from directly providing Competitive Services after January 1, 2001. For such a critical term, a negative reference to another definition risks sweeping in far more legitimate services that APS and other Utility Distribution Companies routinely provide

1 than is either necessary or prudent and violates APS's rights to due process of law, and is
2 arbitrary and capricious. Accordingly, APS asks the Commission to narrowly define this term to
3 clarify what specific services are included within its scope.

4 (2) The rate unbundling and unbundled billing requirements in Rules R14-2-
5 1606 and R14-2-1612(N) do not provide for a meaningful comparison of electric bills for
6 customers and are unnecessarily burdensome for UDCs. Moreover, given the stranded cost
7 settlements emerging for each Affected Utility, the specific unbundling methodologies of each
8 Affected Utility may differ. Thus, these provisions are arbitrary and capricious. APS requests
9 that the Commission include language in Rule R14-2-1606(C) clarifying that UDCs may propose
10 alternative plans for unbundling and unbundled billing if warranted.

11 (3) Rule R14-2-1606 prohibits special discounts or contracts of term for
12 Standard Offer customers. Special contracts or contracts of term are often appropriate for large
13 customers, and have long been permitted by the Commission. The Commission, however, retains
14 ultimate control over the terms and conditions of special contracts. The inclusion of this
15 provision in the Electric Competition Rules was arbitrary and capricious. APS requests that this
16 provision be deleted.

17 (4) Rule R14-2-1615 requires certain Affected Utilities to separate all
18 Competitive Services assets, including certain assets for providing revenue cycle services to
19 competitive customers. Because APS may often be the most economical source—and in some
20 more remote areas the only source—for such services. This requirement is thus arbitrary and
21 capricious, and violates APS's rights to due process and equal protection. APS requests that the
22 Commission revise Rule R14-2-1615 to allow UDCs to offer metering and meter reading to
23 Direct Access customers and Electric Service Providers without divesting these assets.

24 (5) Rule R14-2-1610(E) essentially carves out Public Power Entities (i.e., Salt
25 River Project) from the reciprocity provisions elsewhere in that rule. Because there is no reason
26 to exempt SRP from the reciprocity requirements in the Electric Competition Rules, this

1 provision is arbitrary and capricious. APS requests that the Commission delete the “carve-out” of
2 Public Power Entities in Rule R14-2-1610(E).

3 (6) In Rule R14-2-1616, the Commission adopted more detailed Code of
4 Conduct requirements for UDCs. However, many ESPs have affiliations with utility distribution
5 companies, which provide at least the risk of cross-subsidization. Thus, exempting such ESPs
6 from code of conduct requirements is arbitrary and capricious. APS requests that the
7 Commission include such ESPs within the Code of Conduct rules.

8 (7) Several transmission-related provisions in Rule R14-2-1609 must be
9 modified. As discussed further below, requiring UDCs to guarantee sufficient transmission
10 import capability intrudes upon the exclusive jurisdiction of the Federal Energy Regulatory
11 Commission (“FERC”). Such a requirement also eliminates market forces that should play a
12 role in siting new electric generation capacity within the state. Additionally, because the
13 Commission has made it clear that Affected Utilities are entitled to recover their reasonable costs
14 to establish the Arizona Independent System Administrator and a Regional Transmission
15 Organization, the Commission should expressly confirm that in R14-2-1609(G). The failure to do
16 so is arbitrary and capricious.

17 (8) Rule R14-2-1617 requires all Load Serving Entities to disclose detailed
18 information about pricing and terms of service. Because UDCs provide service through regulated
19 tariffs and schedules, these information disclosure requirements should apply only to
20 “unregulated” ESPs. The failure to so limit this provision is arbitrary and capricious.
21 Accordingly, APS requests that the Commission revise the Rule to limit its reach to load-serving
22 ESPs only.

23
24 **III.**
ATTORNEY GENERAL REVIEW OF THE RULES

25 A.R.S. § 41-1044(A) requires Attorney General review of administrative rules,
26 including Commission rules that do not deal with ratemaking. In *US West v. Arizona*

1 *Corporation Commission*, 295 Ariz. Adv. Rep. 41, (Ct. App., May 18, 1999), the Arizona Court
2 of Appeals construed this statute to apply to rules relating to telephone competition, and
3 invalidated several rules not related to ratemaking that the Commission failed to present for
4 Attorney General review. Because some the Electric Competition Rules similarly are not related
5 to ratemaking, the Commission must submit the amended rules for Attorney General review
6 pursuant to A.R.S. § 41-1044(A).

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8 **IV.**
9 **THE ELECTRIC COMPETITION RULES VIOLATE THE DUE PROCESS**
10 **RIGHTS OF AFFECTED UTILITIES**

11 The Electric Competition Rules violate APS' constitutional rights to due process of
12 law. First, portions of the Electric Competition Rules violate substantive due process because
13 they are unreasonable, arbitrary and capricious, lack a real and substantial relation to the goal of
14 retail electric competition, and deprive APS of the right to engage in electric activities heretofore
15 authorized by its certificates of public convenience and necessity. Second, the Electric
16 Competition Rules contain overly vague or contradictory provisions that violate procedural due
17 process. For example, the definition of Competitive Services, which relies on a negative
18 reference to the definition of Noncompetitive Services, is too vague to offer guidance as to what
19 specific electric power services can lawfully be provided by a UDC.

20 **V.**
21 **THE ELECTRIC COMPETITION RULES DENY AFFECTED UTILITIES**
22 **EQUAL PROTECTION OF THE LAW**

23 The Electric Competition Rules unreasonably discriminate against Affected
24 Utilities without rational basis. For example, Rule R14-2-1616 requires some Affected Utilities
25 to legally separate all generation assets and Competitive Services assets from the Affected
26 Utility's non-competitive electric distribution business. The Amended Rules, however, require no
such legal separation of ESPs, even though these providers or their affiliates may offer monopoly

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2 electric and other public utility services in Arizona and other states or jurisdictions, nor do these
3 requirements even apply to all Affected Utilities. Further, Rule R14-2-1616 imposes a Code of
4 Conduct requirement on Affected Utilities (and Utility Distribution Companies), but does not
5 impose similar restrictions on competing ESPs, some of which are affiliates of entities providing
6 monopoly service in other states or Arizona or are otherwise in a position to unfairly cross-
7 subsidize their competitive activities.

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9 **VI.**
10 **THE ELECTRIC COMPETITION RULES VIOLATE THE ARIZONA**
11 **ADMINISTRATIVE PROCEDURE ACT**

12 The Electric Competition Rules do not contain an adequate Economic, Small
13 Business and Consumer Impact Statement ("EIS"), as required by A.R.S. § 41-1057(2) and
14 A.R.S. § 41-1055. The incomplete EIS attached to the Decision is materially insufficient to meet
15 the standards for such statements as set forth in the Administrative Procedure Act and offers the
16 Commission insufficient information on the true impacts of the Electric Competition Rules.
17 Additionally, the Concise Explanatory Statement does not offer sufficient explanation as to why
18 the Commission rejected certain substantive comments on the Electric Competition Rules.
19 Finally, several of the amendments to the Electric Competition Rules accepted by the
20 Commission fail the restrictions of A.R.S. § 41-1022 and A.R.S. § 41-1025 regarding
21 amendments to noticed rulemakings, in that the rule provisions adopted are substantially different
22 from the noticed rules.

23 **VII.**
24 **THE ELECTRIC COMPETITION RULES ARE NOT SUPPORTED BY**
25 **SUBSTANTIAL EVIDENCE**

26 Certain elements of the Decision, as discussed in Section II, *supra*, lack adequate
evidentiary support in the record for this docket and are unaccompanied by adequate findings of

1 fact and conclusions of law and the reasons and bases therefor.

2 **VIII.**
3 **MISCELLANEOUS LEGAL ISSUES**

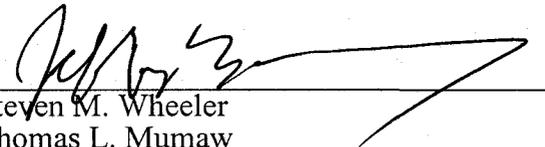
4 For the sake of brevity, APS hereby incorporates by reference the legal arguments set
5 forth in its Application for Rehearing of Decision No. 61272 (December 11, 1998), excepting to
6 the extent that the amended Electric Competition Rules have rendered moot such arguments.

7 **IX.**
8 **CONCLUSION**

9 The Electric Competition Rules fail to adequately address many of the substantive
10 comments raised by APS in its September 7, 1999 Exceptions. Additionally, the Electric
11 Competition Rules are unlawful, or exceed the Commission's authority, for the reasons stated
12 above. The Commission should therefore vacate Decision No. 61969 and amend the Electric
13 Competition Rules as recommended by the Company.

14 RESPECTFULLY SUBMITTED this 19th day of October, 1999.

15 SNELL & WILMER L.L.P.

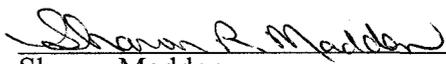
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17 By: 

18 Steven M. Wheeler
19 Thomas L. Mumaw
20 Jeffrey B. Guldner
21 Attorneys for Arizona
22 Public Service Company
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CERTIFICATE OF SERVICE

The original and ten (10) copies of the foregoing document were filed with the Arizona Corporation Commission on this 19th day of October, 1999, and service was completed by mailing or hand-delivering a copy of the foregoing document this 19th day of October, 1999, to all parties of record herein.


Sharon Madden

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