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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
 Commissioner - Chairman

JIM IRVIN
 Commissioner

WILLIAM A. MUNDELL
 Commissioner

AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED

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IN THE MATTER OF COMPETITION IN THE) DOCKET NO. RE-00000C-94-0165
 PROVISION OF ELECTRIC SERVICES)
 THROUGHOUT THE STATE OF ARIZONA.)

**MOTION FOR A DETERMINATION OF "NON-APPLICABILITY" OF R14-2-1609,
 OR IN THE ALTERNATIVE,
 APPLICATION FOR WAIVER OF R14-2-1609.**

Navopache Electric Cooperative, Inc. ("Navopache") moves for a Determination of "Non-Applicability" of the provisions of Rule R14-2-1609 ("Rule 1609"), to Navopache, for the reason that Navopache does not own or operate any Arizona transmission facilities within the meaning of Rule 1609. In the alternative, if the Hearing Division determines that the provisions of Rule 1609 apply to Navopache then, pursuant to R14-2-1614(C), Navopache requests a waiver from Rule 1609 for the reasons that: (1) Navopache cannot, alone, form or implement an ASIA; and, (2) Navopache's service territory will not be open to competition until well after the ASIA is scheduled to be implemented anyway.

A. NAVOPACHE DOES NOT OWN OR OPERATE TRANSMISSION FACILITIES OR MUST-RUN GENERATING UNITS.

Navopache believes that R14-2-1609 ("Rule 1609") does not apply to Navopache as a distribution cooperative. However, there has been some confusion in this regard. For this reason, Navopache requests a formal determination, by the Hearing Division, that Rule 1609 does not apply to Navopache. Rule 1609 purports to impose on the Affected Utilities the

1 responsibility for ensuring that an Arizona Scheduling Administrator ("ASIA") be formed and
2 to take certain specified actions by certain specified dates. Specifically, Rule R14-2-1609(D)
3 requires the Affected Utilities, that own and operate Arizona transmission facilities, to form an
4 AISA. Next, Rule R14-2-1609(E) requires the Affected Utilities, that own or operate Arizona
5 transmission facilities, to have made a filing of an AISA implementation plan within 30 days of
6 the adoption of the Competition Rules. Lastly, Rule R14-2-1609(I) generally requires the
7 Affected Utilities and other stakeholders to develop statewide protocols for pricing and
8 availability of services from must-run generating units. Navopache is a simple distribution
9 cooperative with distribution lines to serve end-users with the delivery of power it purchases
10 from a wholesale power supplier. Thus, Navopache does not "own or operate" any
11 transmission facilities within the meaning of Rule 1609. Also, Navopache, as a distribution
12 only cooperative, does not "own or operate" any must-run generating units as defined by Rule
13 1609. Accordingly, the provisions of Rule 1609 do not apply to Navopache and Navopache's
14 request for a formal determination by the Hearing Division that Rule 1609 does not apply to
15 Navopache should be granted.

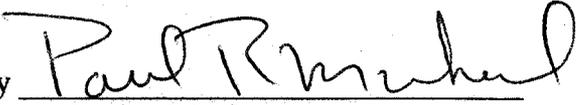
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19 **B. NAVOPACHE'S REQUEST FOR A WAIVER SHOULD BE GRANTED
20 BECAUSE NAVOPACHE IS ONE OF SEVERAL ASIA MEMBERS.**

21 Assuming arguendo, that the Commission does not make the "non-applicability"
22 determination requested above, Navopache requests a waiver from the provisions of Rule 1609
23 pertaining to the development and implementation of an ASIA. As explained in a letter to the
24 Director of the Commission's Utilities Division, Navopache, although a small rural electric
25 distribution cooperative that neither owns nor operates any transmission facilities within the
26

1 meaning of the Rules 1609, nevertheless voluntarily participates in the ASIA process and even
2 sponsors a representative on the Board of Directors of the ASIA. However, this should in no
3 way be construed that Navopache is required to participate in the ASIA process under Rule
4 1609. Moreover, Navopache is just one of sixty-nine AISA members. Thus, Navopache has
5 little or no power to make the ambitious and aggressive development and implementation
6 timelines set by Rule 1609 become a reality. It is also worth noting that Navopache's service
7 territory is not yet open to competition. Navopache is currently in the process of negotiating a
8 stranded cost plan with the Commission's Utilities Division Staff ("Staff") and other
9 intervenors. See Docket No. E-01787A-98-0465. Therefore, Navopache's service territory is
10 not expected to be open to competition at least for another sixty (60) to ninety (90) days and
11 thus will not be affected by the timelines set by Rule 1609. Accordingly, Navopache's request
12 for a waiver from the requirements of Rule 1609 discussed above is in the public interest and
13 should be granted.
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16 RESPECTFULLY SUBMITTED this 7th day of January, 2000.

17
18 MARTINEZ & CURTIS, P.C.

19
20 By 

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**The original and ten (10) copies of
the foregoing are filed this 7th day
of January, 2000 with:**

**DOCKET CONTROL
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007**

**A copy of the foregoing is mailed
this 7th day of January, 2000 to:**

**All parties of record in
Docket No. RE-000C-94-0165**

By Paul R. Marshall