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EXCEPTION

AZ CORP COMMISSION

BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN
Commissioner - Chairman
RENZ D. JENNINGS
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DOCUMENT CONTROL

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

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

Arizona Corporation Commission

DOCKETED

DEC 09 1998

DOCKETED BY 

**EXCEPTIONS TO PROPOSED OPINION AND ORDER REGARDING ELECTRIC
COMPETITION RULES SUBMITTED BY ASARCO INCORPORATED,
CYPRUS CLIMAX METALS COMPANY, ENRON CORP. AND
ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION**

December 9, 1998

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

1 Pursuant to the December 4, 1998 Procedural Order in this docket, ASARCO, Incorporated,
2 Cyprus Climax Metals Company, Enron Corp., and Arizonans for Electric Choice and
3 Competition¹ (collectively referred to herein as "AECC") hereby submit their Exceptions to the
4 proposed Opinion and Order regarding the proposed Retail Electric Competition Rules, A.A.C.
5 R14-2-203, et seq. and R-14-2-1601, et. seq. (the "Rules"). AECC, and some of its members, have
6 previously filed written comments regarding the Rules and these prior filings are adopted herein by
7 this reference. See AECC Written Comments dated July 6, 1998, August 4, 1998, September 18,
8 1998 and October 2, 1998; Enron Written Comments dated July 2, 1998.

9 **A.A.C R14-2-1604 COMPETITIVE PHASES**

10 **Special Contracts**

11 Perhaps the most striking omission from the Rules is the lack of any specific reference to
12 "special contract" customers. These uniquely situated customers, generally the Affected Utilities'
13 largest customers, and some of the state's largest employers, are, apparently, to be left out of the
14 competitive marketplace if their contracts expire before all customers have access to competition.
15 This follows from the fact that the Rules, as proposed, provide customers with demand loads above
16 1 MW access to competition during the transition period commencing January 1, 1999 but only on
17 a "first-come, first served" (terms which are not defined) basis up to 20% of the Affected Utilities'
18 1995 system peak demand. See R14-2-1604.A. Although the utilities' special contract customers
19 have demand loads greater than 1 MW, many of them will not be "first-comers" because their
20 contracts expire at varying times after the January 1, 1999 introduction date for competition.

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23 ¹ Arizonans for Electric Choice and Competition is a coalition of companies and associations in favor of
24 competition and includes Cable Systems International, BHP Copper, Motorola, Chemical Lime, Intel,
25 Hughes, Honeywell, Allied Signal, Cyprus Climax Metals, Asarco, Phelps Dodge, Enron, Homebuilder's
26 of Central Arizona, Arizona Mining Industry Gets Our Support, Arizona Food Marketing Alliance,
Arizona Association of Industries, Arizona Multi-housing Association, Arizona Rock Products
Association, Arizona Restaurant Association, Arizona Association of General Contractors, and Arizona
Retailers Association.

1 Admittedly, at first glance, this may seem like an issue of “contract” to which these
2 customers have agreed to be bound and for which consideration was exchanged. However, that is a
3 deceptively narrow view fostered by Affected Utilities such as APS. See Reply Comments of
4 Arizona Public Service Company dated October 2, 1998 at pp. 2-3 (“special contract customers
5 have enjoyed preferential rates for years. . . and hardly present a compelling case for preferential
6 treatment”). At worst, APS asserts, these customers may have to pay standard offer rates. Id. at 3.
7 What APS fails to point out is that those standard offer payments will result in huge profits for
8 Affected Utilities previously providing those services at reduced rates. Perhaps more importantly,
9 forcing these large electric consumers to standard offer tariffs, even for one to two years, will have
10 devastating economic impacts on these customers and their employees. In fact, the difference
11 between the rates paid under special contracts and the standard offer rates could be millions of
12 dollars annually. In certain industries, such as Arizona’s already depressed copper industry, such
13 substantial increases in operating expenses could result the termination of operations and loss of
14 jobs for Arizona citizens.

15 Adopting Rules governing competition that fail to recognize the unique service
16 characteristics of special contract customers is also inequitable. For example, some special contract
17 customers take service at high voltage and own their own substations and distribution systems.
18 These factors reduce the utilities’ costs of service and must be recognized in the Rules. The rates
19 for special contract customers help keep these customers on the Affected Utility’s system rather
20 than having these customers self-generate. By remaining on the system and purchasing enormous
21 quantities of electric power, these special contract customers pay significant portions of the utility’s
22 fixed costs lowering the rates paid by the rest of the utility’s customers. In addition, many of these
23 special contracts have “interruptible” provisions that enable Affected Utilities to meet peak demand
24 of customers without constructing additional capacity.

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1 Staff also opposes recognition of the unique circumstances of special contract customers in
2 the Rules. However, Staff has failed to offer any explanation for its opposition. See Staff's Reply
3 Comments Re: Decision No. 61071 dated October 2, 1998 at p.13.

4 In summary, recognition of special contract customers is not, as APS cries, "simply a crass
5 attempt by a handful of customers to 'butt into line' ahead of other customers." See Reply
6 Comments of Arizona Public Service Company dated October 2, 1998 at p. 2 Instead, it is the
7 equitable solution to the unique circumstances of customers who entered into long-term contracts
8 before the transition to competition started. For this reason, AECC respectfully requests that the
9 Commission substitute the revised language to R14-2-1604 set forth in Exhibit "A" hereto for the
10 language currently proposed. This language will ensure that special contract customers have access
11 to competitive generation services upon expiration of these contracts.

12 Buy-Through Service (R14-2-1604.G)

13 A.A.C. R14-2-1604.G currently provides that Affected utilities "**may**" engage in buy-
14 throughs with consumers. Throughout these proceedings, AECC has consistently maintained that
15 the Commission must amend the Rules to require that Affected Utilities provide for buy-through
16 service. Instead, the proposed Opinion and Order merely amends this provision by substituting
17 "Load-Serving Entity" for "Affected Utility," a change of form rather than substance. In fact,
18 Affected Utilities **may** currently provide buy-through services; however, none do.

19 Requiring Load-Serving Entities to allow for buy-through services provides an important
20 safety net for customers who have acted in reliance on the timely introduction of full and open retail
21 access to electric generation. In opposing mandatory buy-through services, APS asserted that it
22 was "at a complete loss to understand why this is an issue except as a subtle attempt to allow by-
23 pass of the Systems Benefits charge and any CTC." See Reply Comments of Arizona Public
24 Service Company dated October 2, 1998 at p.2. Ironically, recent events concerning the APS and
25 TEP settlement agreements with the Commission Staff provide an answer to APS's query about the
26 need for mandating buy-through service. As a result of these settlements, the introduction of

1 competition may already have been delayed. Similarly, the road towards full competition for
2 electric generation services will continue to be fraught with pitfalls and delays and it is likely that
3 full access to competition may be further delayed. Buy-through services are necessary to protect
4 consumers from these delays. These services are not, as APS frivolously has alleged, an effort to
5 avoid payment of the CTC or other charges for transmission, distribution and related services. In
6 fact, the revisions repeatedly suggested by AECC expressly provide for payment of transmission,
7 distribution and related charges. See Exhibit A hereto.

8 Commission Staff has also opposed the suggestion that Affected Utilities, or Load-Serving
9 Entities, be obligated to provide for buy-through services. The only rationale offered by Staff for
10 opposing mandatory buy-through is Staff's belief that these entities "should not be required to enter
11 into buy-throughs." See Staff's Reply Comments Re: Decision No. 61071 dated October 2, 1998 at
12 p.16. Frankly, AECC respectfully submits that Staff's belief is irrelevant. Moreover, Staff's
13 "belief" is directly contrary to that of the Arizona Legislature which, in enacting HB 2663,
14 mandated that buy-through service be provided by public power entities. See A.R.S. § 30-803.D.

15 In claiming that Affected Utilities, Utility Distribution Companies and Load-Serving
16 Entities should not be required to offer buy-through service, Staff has also ignored the Arizona
17 Constitution. By the express terms of the Arizona Constitution, the Affected Utilities are
18 common carriers. Ariz. Const. Art. XV § 10. When the Affected Utilities accepted CC&Ns
19 from the Commission, as common carriers they agreed to make their facilities, including their
20 transmission and distribution lines, available to other public service corporations (this would
21 include certificated ESPs) whenever the Commission determined it to be in the public interest.
22 See A.R.S. § 40-332. The public interest now demands, as reflected in the Rules, that there be
23 competition in electric generation. In order to ensure that consumers receive the benefits of
24 competition, and that the Affected Utilities move seriously towards competition, buy-through
25 service must be mandatory.

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1 **R14-2-1613 SERVICE QUALITY, CONSUMER PROTECTION, SAFETY AND BILLING**

2 **Must-Run Generation**

3 R14-2-1613.O sets forth the minimum cost elements to be separately identified in the
4 Affected Utilities' unbundled tariffs. AECC recommends that fixed must-run generation costs also
5 be identified as a separate line item in the utilities' unbundled tariffs. Currently, the fixed costs
6 associated with generation facilities that will provide must-run generation service are included in
7 bundled rates. However, in accordance with the must-run protocol developed by stakeholders in
8 the AISA Operating Committee, and adopted by the AISA Board for submittal to FERC, fixed
9 must-run costs are to be billed to Scheduling Coordinators in accordance with their relative share
10 of monthly load in a given must-run zone. Indeed, this proposal was made to the AISA
11 Operating Committee by APS.

12 Customers residing in the must-run zone who purchase competitive power would not be
13 billed for this service so long as the cost was being billed to the customer's Scheduling
14 Coordinator, as planned. Customers who purchase competitive power and who do not reside in a
15 must-run zone would not be billed for this service at all. In any event, failure to separately
16 identify fixed must-run costs in unbundled tariffs will result in the utilities double-billing parties
17 for fixed must-run costs.

18 RESPECTFULLY SUBMITTED this 9th day of December, 1998.

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1 **EXHIBIT A**

2 **R14-2-1604. Competitive Phases**

3 A. Each Affected Utility shall make available at least 20% of its 1995 system retail peak
4 demand for competitive generation supply as further described in this rule.

5 1. All Affected Utility customers with non-coincident peak demand load of 1 MW or
6 greater will be eligible for competitive electric services no later than January 1,
7 1999. Customers meeting this requirement shall be eligible for competitive
8 services until 20% of the Affected Utility's 1995 system peak demand is served
9 by competition.

10 2. Affected Utility customers with single premise non-coincident peak load demands
11 of 40 kW or greater aggregated into a combined load of 1 MW or greater will be
12 eligible for competitive electric services no later than January 1, 1999. Self-
13 aggregation is also allowed pursuant to the minimum and combined load demands
14 set forth in this rule. If peak load data are not available, the 40 kW criterion can
15 be determined to be met if the customer's usage exceeded 16,500 kWh in any
16 month within the last 12 consecutive months. From January 1, 1999, through
17 December 31, 2000, aggregation of new competitive customers will be allowed
18 until such time as 20% of the Affected Utility's 1995 system peak demand is
19 served by competitors. At that point all additional aggregated customers must
20 wait until January 1, 2001 to obtain competitive service.

21 3. Notwithstanding the limitation to 20% of the Affected Utility's 1995 system peak
22 demand provided in paragraphs 1 and 2 of this section, effective January 1, 1999,
23 all loads served by Load Serving Entities under special contracts will be eligible
24 for competitive services upon the expiration of the special contract.

25 4. Affected Utilities shall notify customers eligible under this subsection of the terms
26 of the subsection no later than October 31, 1998.

EXHIBIT A

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G. Load Serving entities shall provide for buy-through service to any electric consumer on request at no additional charge other than charges for required transmission, distribution, or ancillary services (CTC and Systems Benefits) from and after July 1, 1999.