

EXCEPTION

Arizona Corporation Commission

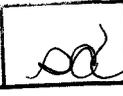
BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED
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5 IN THE MATTER OF THE COMPETITION IN) DOCKET NO. RE-00000C-94-0165
6 THE PROVISION OF ELECTRIC SERVICES)
7 THROUGHOUT THE STATE OF ARIZONA) EXCEPTIONS TO PROPOSED OPINION AND
8) ORDER
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Pursuant to the direction of the Procedural Order dated December 4, 1998, the Arizona Transmission Dependent Utility Group, by its undersigned counsel, herewith submits its exceptions to the Proposed Opinion and Order in this Docket finalizing the modifications to the Electric Competition Rules made on an emergency basis on August 10, 1998 in Decision 61071 and making further modifications to the Electric Competition Rules. The exceptions will be divided into two parts: Exceptions to the Proposed Opinion and Order; and Exceptions to the Proposed Final Rules As Amended, attached as Exhibit A to the Proposed Opinion and Order and incorporated by reference therein.

EXCEPTIONS TO THE PROPOSED OPINION AND ORDER

On page 3 of the Proposed Opinion and Order, lines 9-15, the Proposed Opinion and Order states that the stranded cost rule "incorporates the provisions of Decision No. 60977 (June 22, 1998) on stranded cost recovery." This is not entirely true. In its June 22, 1998 Opinion and Order, the Commission stated (p.19):

"Several of the parties expressed an interest in an exit fee that would enable them to make an up-front buy out of their portion of stranded costs. We will order each Affected Utility to develop a discounted stranded costs exit methodology that a customer may choose to determine an amount in lieu of

1 making monthly payments. The methodology should be developed with input from
2 interested parties and approved by the Commission."

3 That has not been done. APS, for instance, in its stranded cost
4 methodology filing dismissed the exit fee as impossible because it would be
5 an attempt to recover money from someone who has left the system. That is
6 not what the Commission intended nor was it the nature of the request that
7 led to the Commission deciding that Affected Utilities should have exit fees.
8 The exit fee is intended as an alternative method for payment of stranded
9 costs on a current discounted basis for customers who are still within the
10 system but using a different electric service provider. That APS, for
11 example, has already used this technique in at least one instance is
12 documented in the record of the stranded cost proceeding. The Proposed
13 Opinion and Order needs to be corrected, as does R14-2-1607. Suggested
14 language carrying forward the June 22, 1998 Order provision in the rule is
15 included below.

16 On page 4 of the Proposed Opinion and Order at lines 7-11 appears a
17 paragraph attempting to articulate the purpose of Section R14-2-1611 on
18 reciprocity. This statement is inaccurate and misleading. The rule has
19 several purposes. Paragraphs A and B allow jurisdictional entities that are
20 not Affected Utilities to remain outside the scope of the Rules unless they
21 voluntarily choose to enter competition. This provision is intended to allow
22 small distribution co-ops along Arizona's northern and eastern borders to
23 continue to rely on their out-of-state generation and transmission
24 cooperatives and not participate in competition unless they elect to do so.
25 Paragraph C (unchanged) provides a reciprocity rule for non-jurisdictional
entities to open up to competition and thereby gain access to enforcement
procedures of the Commission against jurisdictional entities. Paragraph D
describes the intergovernmental agreement approach that can be used to

1 facilitate competition between jurisdictional and non-jurisdictional
2 entities. Paragraph E is intended to restrict the for-profit subsidiary of
3 SRP from competition in Arizona unless SRP opens its electric service area to
4 competition. R14-2-1611 cannot and does not state that it regulates Arizona
5 electric utilities that are not jurisdictional to the Commission. It fails
6 to make the distinctions noted above and inaccurately describes the plain
7 meaning of the Rules when viewed in the context of the Commission's
8 jurisdiction. The paragraph should be totally rewritten or, perhaps more
9 easily, deleted.

10 On page 7 of the Proposed Opinion and Order at lines 7 and 8, proposed
11 finding of fact #9 should be modified on line 7 after "Staff," by inserting
12 "and as further revised herewith,". It is our view that additional changes
13 need to be made to the Proposed Rules changes being considered for adoption
14 by the Commission. This change in this finding would be necessary for that
15 purpose.

16 EXCEPTIONS TO THE PROPOSED RULES AMENDMENTS

17 Burden of Proof

18 The treatment of stranded costs and mitigation in terms of what burden
19 of proof the Affected Utility has is inconsistently labeled in these Proposed
20 Rules changes and in the existing Rules. The definition requires unmitigated
21 stranded costs to be "verifiable". R14-2-1601(39). Appendix A, p.23, line
22 21. Stranded cost estimates must be "fully supported" by analyses and by
23 records. R14-2-1607.C. Appendix A, p.34, line 17. The Commission has
24 stated that Affected Utilities must "demonstrate they have aggressively
25 pursued mitigation efforts. As a result, the Affected Utility has a high
burden of proof regarding its mitigation efforts." (June 22, 1998 Order,
p.14) (emphasis supplied). The high burden of proof in question could only be
"clear and convincing evidence". Thus, the Proposed Rule misstates the

1 burden of proof requirement. It should be modified on line 17 after "be" to
2 insert "demonstrated by clear and convincing evidence and". A high burden of
3 proof in a civil case means clear and convincing evidence. It does not mean
4 substantial evidence. It does not mean preponderance of the evidence. This
5 is a standard that the Affected Utility must bear and it should be clearly
6 articulated in generally accepted legal terminology in the Rules.

7 The systems benefits charges burden of proof should also be amended.
8 Currently, the burden is to "provide adequate supporting documentation".
9 R14-2-1608.B. Appendix A, p.37, line 9. There is a general presumption that
10 a law or rule that uses different language to state a principle means that a
11 different meaning is intended. There is no logic in requiring a high burden
12 of proof for stranded costs and for mitigation efforts and then allowing the
13 jurisdictional entity merely to provide "adequate" proof of systems benefits
14 charges. This sends a bad public policy signal that the Commission will be
15 substantially less rigorous in screening these charges than it intends to be
16 in dealing with stranded costs and mitigation.

15 Exit Fee

16 In order to carry out the intent of the Decision in the June 22, 1998
17 Order on this subject, R14-2-1607.D. as proposed should be amended by adding
18 at the end of Subsection D. the following sentence: "The filing shall
19 include a discounted stranded costs exit methodology that a customer may
20 choose to use to determine an amount due the Affected Utility in lieu of
21 making monthly distribution charge or other payments."

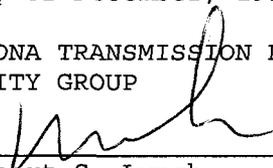
22 ISA/ISO Costs

23 R14-2-1610.F. expresses the intent of the Commission that "prudently-
24 incurred" costs related to establishment and operation of an Independent
25 Scheduling Administrator (ISA) or Independent System Operator (ISO) should be
recovered from all customers using a transmission system including wholesale

1 customers. The Commission further states that it may authorize Affected
2 Utilities to recover such costs through a distribution surcharge if the
3 Federal Energy Regulatory Commission (FERC) does not approve rates for this
4 purpose. A number of ambiguities pervade this subsection. For instance,
5 there is no recognition that wholesale entities using an Arizona Affected
6 Utility transmission system are likely to be members of the ISA or ISO
7 already and contributing to the costs of it through the organization itself.
8 Moreover, an Arizona-only organization may provide no significant benefits
9 whatsoever to out-of-state wholesale entities. Indeed, it may be an
10 impediment to their ability to compete, an issue that will have to be
11 resolved at FERC. In any event, to the extent that either an ISA or ISO is
12 supported directly by wholesale customers of one or more Affected Utilities
13 in an ISA or ISO, it would be inappropriate for FERC to then establish a rate
14 structure that further penalizes these wholesale customers. The Proposed
15 Rule appears to mandate the Affected Utilities to request to do that very
16 thing. Obviously, any Affected Utility can file with the Commission a
17 request for an additional cost recovery for this purpose after FERC deals
18 with the cost recovery issue. Forcing the Affected Utilities to file
19 something that may be contrary to FERC rules seems imprudent. The outcome
20 will be the same whether this subsection of the Rule indicates this intent or
21 not. Either the entire subsection could be deleted without doing any
22 violence to Commission intent or the last sentence could be retained to
23 express that intent without inadvertently causing unneeded problems.

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

23 ARIZONA TRANSMISSION DEPENDENT
24 UTILITY GROUP

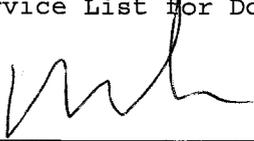
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1 Original and 10 copies of the
2 foregoing filed this 9th day
of December, 1998 with:

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5 Copies of the foregoing mailed
6 this 9th day of December, 1998,
to:

7 Service List for Docket No. RE-00000C-94-0165

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