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OPEN MEETING ITEM

EXCEPTION

December 30, 1998

VIA HAND DELIVERY

Chairman-Commissioner Jim Irvin
Commissioner Renz D. Jennings
Commissioner Carl J. Kunasek
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

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AZ CORP COMMISSION
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Re: Open Meeting Violation; Item No. 8 Special Open Meeting –
December 31, 1998 at 5:30 p.m.; Rulemaking (RE-00000C-94-0165) –
In the Matter of Competition in the Provision of Electric Services
Throughout the State of Arizona: Request(s) for Reconsideration
of Decision No. 61272

Dear Commissioners:

AEPCO, Duncan and Graham (collectively "the Cooperatives") protest the noticing of and any action on this item at your Special Open Meeting tomorrow. Apparently, the Commission intends to take up and deny at this meeting any Applications for Rehearing on the Electric Competition Rules. These Applications will not even be filed until tomorrow – possibly as late as 5:00 p.m. Not only does this procedure constitute an outrageous violation of the parties' due process rights, it shreds Arizona's Open Meeting Law. A.R.S. §38-431 et seq.

A.R.S. § 38-431.02.C requires the posting of a meeting agenda on at least 24 hours notice. A.R.S. §38-431.02.H requires those agendas to "list the specific matters to be discussed, considered or decided at the meeting." (Emphasis supplied.) In this case, the Commission has not and, in fact, cannot list the specific matters to be decided tomorrow because it doesn't know what they will be. It will not receive them until minutes before the Open Meeting.

Thus, neither the parties nor the public will have any idea as to what issues or pleadings the Commission will consider until literally moments before you take action. No one can examine this docket and review the subject matter this meeting will involve because those matters don't exist and have not yet been filed. Your general agenda statement that "Request(s) for Reconsideration of Decision No. 61272" will be considered is clearly not the notice "of the matters to be discussed or decided" the Legislature had in mind in its declaration of public policy in A.R.S. §38-431.09.

Chairman-Commissioner Jim Irvin
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December 30, 1998
Page 2

Violations of the Open Meeting Law carry a number of sanctions and penalties. As importantly, they weaken the public's confidence that its government will conduct its business openly and appropriately. Tomorrow's Special Open Meeting offends these goals and breaches that trust. The Cooperatives urge you to cancel it.

Very truly yours,

GALLAGHER & KENNEDY

A handwritten signature in black ink, appearing to read "Michael M. Grant", with a long horizontal flourish extending to the right.

By
Michael M. Grant

Original and 10 copies filed with Docket Control.

cc: Timothy Delaney, Esq. (via facsimile)
All Parties of Record (via U.S. Mail)

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