

REHEARING 1/19/99



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BEFORE THE ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION

DOCKETED

DEC 31 4 34 PM '98

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

Pursuant to A.R.S. Section 40-253 and A.A.C. R14-3-111, the Arizona Transmission Dependent Utility Group¹, by its undersigned counsel, herewith applies for rehearing of the Commission's Opinion and Order in this Docket (Decision No. 61272) finalizing the modifications to the Electric Competition Rules made on an emergency basis on August 10, 1998 in Decision No. 61071 and making further modifications to the Electric Competition Rules. Our request for rehearing is divided into two parts: Errors in the Opinion and Order; and Errors and Omissions in the Final Rules As Amended, attached as Exhibit A to the Proposed Opinion and Order and incorporated by reference therein.

ERRORS IN THE OPINION AND ORDER

On page 3 of the Opinion and Order, lines 7-13, the 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):

¹ Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

1 "Several of the parties expressed an interest in an exit fee that would
2 enable them to make an up-front buy out of their portion of stranded costs.
3 We will order each Affected Utility to develop a discounted stranded costs
4 exit methodology that a customer may choose to determine an amount in lieu of
5 making monthly payments. The methodology should be developed with input from
6 interested parties and approved by the Commission."

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

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

1 open up to competition and thereby gain access to enforcement procedures of
2 the Commission against jurisdictional entities. Paragraph D describes the
3 intergovernmental agreement approach that can be used to facilitate
4 competition between jurisdictional and non-jurisdictional entities.
5 Paragraph E is intended to restrict the for-profit subsidiary of SRP from
6 competition in Arizona unless SRP opens its electric service area to
7 competition. R14-2-1611 cannot and does not state that it regulates Arizona
8 electric utilities that are not jurisdictional to the Commission. The above-
9 cited discussion in the Opinion and Order fails to make the distinctions
10 noted above and inaccurately describes the plain meaning of the Rules when
11 viewed in the context of the Commission's jurisdiction. The paragraph should
12 be deleted.

12 ERRORS AND OMISSIONS IN THE FINAL RULES AS AMENDED

13 Burden of Proof

14 The treatment of stranded costs and mitigation in terms of what burden
15 of proof the Affected Utility has is inconsistently labeled in these Rules.
16 The definition requires unmitigated stranded costs to be "verifiable". R14-
17 2-1601(39). Appendix A, p.23, line 21. Stranded cost estimates must be
18 "fully supported" by analyses and by records. R14-2-1607.C. Appendix A,
19 p.34, line 17. The Commission has stated that Affected Utilities must
20 "demonstrate they have aggressively pursued mitigation efforts. As a result,
21 the Affected Utility has a high burden of proof regarding its mitigation
22 efforts." (June 22, 1998 Order, p.14) (emphasis supplied). The high burden
23 of proof in question could only be "clear and convincing evidence". Thus,
24 the Rules misstate the burden of proof requirement. It should be modified on
25 line 17 after "be" to insert "demonstrated by clear and convincing evidence
and". A high burden of proof in a civil case means clear and convincing
evidence. It does not mean substantial evidence. It does not mean

1 preponderance of the evidence. This is a standard that the Affected Utility
2 must bear and it should be clearly articulated in generally accepted legal
3 terminology in the Rules.

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

13 Exit Fee

14 In order to carry out the intent of the Decision in the June 22, 1998
15 Order on this subject, R14-2-1607.D. as amended should be further amended by
16 adding at the end of Subsection D. the following sentence (Appendix A, p.35,
17 line 1): "The filing shall include a discounted stranded costs exit
18 methodology that a customer may choose to use to determine an amount due the
19 Affected Utility in lieu of making monthly distribution charge or other
20 payments."

20 ISA/ISO Costs

21 R14-2-1610.F. expresses the intent of the Commission that "prudently-
22 incurred" costs related to establishment and operation of an Independent
23 Scheduling Administrator (ISA) or Independent System Operator (ISO) should be
24 recovered from all customers using a transmission system including wholesale
25 customers. Appendix A, p.43, lines 12-20. The Commission further states
that it may authorize Affected Utilities to recover such costs through a

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

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FOR ALL THE FOREGOING REASONS, the Commission should grant rehearing
herein and establish a procedural schedule for dealing with the deficiencies
in the Rules.

1 RESPECTFULLY SUBMITTED this 31st day of December, 1998.

2 ARIZONA TRANSMISSION DEPENDENT
3 UTILITY GROUP

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10 Original and 10 copies of the
11 foregoing filed this 31st day
12 of December, 1998 with:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington Street
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17 Copies of the foregoing mailed
18 this 31st day of December, 1998,
19 to:

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

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