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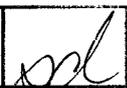
BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
COMMISSIONER-CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

Arizona Corporation Commission

DOCKETED

DEC 31 1998

DOCKETED BY 

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

DOCKET NO. RE-00000C-94-0165

APPLICATION BY
ARIZONA PUBLIC SERVICE COMPANY FOR:
(1) REHEARING OF DECISION NO. 61272;
(2) A STAY OF THE ELECTRIC COMPETITION RULES; AND
(3) A TEMPORARY EXEMPTION FROM COMPLIANCE WITH
THE ELECTRIC COMPETITION RULES

Arizona Public Service Company ("APS" or "Company") hereby submits its Application for Rehearing ("Application") of Decision No. 61272 (December 11, 1998) ("Decision No. 61272" or "Decision"). APS joins in this filing an Application for a Stay of the Electric Competition Rules and an Application for a Temporary Exemption from Compliance with the Electric Competition Rules.

In Decision No. 61272, the Arizona Corporation Commission ("Commission") adopted amendments to existing administrative rules ("Amended Rules") dealing with the provision of competitive retail electric service in Arizona ("Electric Competition Rules"). The rule amendments adopted in Decision No. 61272 largely confirm amendments to the Electric Competition Rules that were adopted by the Commission on an "emergency" basis by Decision No. 61071 (August 10, 1998).

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1 Rules, including Attachment 1 thereto (Exhibit B); and

- 2 3) APS' December 28, 1998 Exceptions to Recommended Order of December
3 16, 1998 on PG&E Energy Services Application for a Competitive CC&N,
4 Docket No. E-03595A-98-0389 (Exhibit C).

5 **II. THE COMMISSION MUST ACKNOWLEDGE THAT IT CANNOT**
6 **NOW MEET THE IMPLEMENTATION SCHEDULE**
7 **SET FORTH IN THE ELECTRIC COMPETITION RULES**

8 The Electric Competition Rules in all their various forms, as well as the stakeholders,
9 anticipated that regulatory actions relating to the implementation of the Electric Competition Rules
10 would be completed well in advance of the January 1, 1999 start date for competition. That,
11 however, has not occurred. In addition to certifying Electric Service Providers ("ESPs"), the
12 Commission must still resolve a number of critical implementation issues including unbundled
13 tariffs for APS and TEP, market structure, stranded cost recovery, system reliability, jurisdictional
14 issues between the Commission and the Federal Energy Regulatory Commission ("FERC"),
15 "must-run" generation, etc., prior to the start of competition. Although the settlements reached by
16 Staff, APS and TEP might have addressed enough of these outstanding issues to have allowed
17 competition to be phased in as scheduled in the Electric Competition Rules, the withdrawal of the
18 settlements following the Arizona Supreme Court's stay eliminated any practical ability of the
19 Commission to meet the January 1, 1999 start date. Indeed, at least implicit in the Court's stay
20 was a concern that the Commission was moving too quickly to implement competition and,
21 without consensus among the stakeholders, that the outstanding implementation issues therefore
22 required additional debate.

23 APS has long voiced its position that the Commission must resolve, in a timely
24 manner, these numerous implementation issues to give meaning to the process that leads to
25 competition. For example, the Company's inability to file unbundled tariffs on December 31,
26 1997 resulted because of the lack of any consensus as to how the many then-outstanding
implementation issues were to be resolved, and the lack of scheduled Commission proceedings to

1 resolve them. APS subsequently made a rate filing on February 13, 1998, but was clear in that
2 filing that, as a practical matter, the Commission had still to address these issues prior to beginning
3 competition or approving unbundled tariffs. To this day, such issues remain unaddressed by the
4 Commission.

6 III. STAY OF ELECTRIC COMPETITION RULES 7 AND REQUEST FOR EXEMPTION

8 Staying the Electric Competition Rules and exempting Affected Utilities from
9 compliance with such rules is the only pragmatic solution. Such a stay should not prevent the
10 Commission from continuing on with those steps that it can meaningfully undertake to prepare for
11 eventual implementation of the Electric Competition Rules. Therefore, the presently scheduled
12 CC&N hearings for APS Energy Services, Inc., and other electric service providers ("ESPs")
13 should continue as scheduled.

14 In light of the foregoing, APS asks the Commission to enter an order or orders
15 granting rehearing of Decision No. 61272 (or entering an order on its own motion) and which
16 makes the following specific findings of fact:

- 17 1) The Commission has not resolved the issue of stranded costs for any of the
18 Affected Utilities.
- 19 2) The Commission has not considered and approved unbundled tariffs for
20 either APS or TEP, which are by far the largest two electric utilities under the
21 Commission's jurisdiction.
- 22 3) The Commission has not approved unbundled tariffs for Citizens Utilities
23 Company ("Citizens"), which is the third largest electric utility under the
24 Commission's jurisdiction.
- 25 4) The Commission has not certificated a meaningful number of ESPs so as to
26 provide customers with effective choice as of December 31, 1998.
- 5) These and other factors described in APS' Application for Rehearing of
Decision No. 61272 make implementation of the Electric Competition Rules
at the present time both impractical and counterproductive to the timely
resolution by the Commission of these outstanding issues.
- 6) Parties to this Docket should be given twenty (20) calendar days to provide

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the Commission with a listing of issues still unresolved by the Electric Competition Rules (including necessary changes to such Electric Competition Rules) and a proposed schedule for resolving such issues.

- 7) The Commission should thereafter schedule a procedural conference to discuss the outstanding issues and to give guidance on a procedural schedule for their final resolution in a timely fashion.
- 8) Presently scheduled CC&N hearings are necessary components of properly effectuating the Electric Competition Rules and can proceed as scheduled.

In turn, these findings of fact necessitate that the Commission make certain conclusions of law in the above described order:

- 1) There is good cause for the Commission to stay the effectiveness of the Electric Competition Rules.
- 2) The public interest justifies granting APS and other Affected Utilities a temporary exemption from compliance with the Electric Competition Rules until further order of the Commission.
- 3) The Commission has authority to receive further comments and schedule further proceedings on the Electric Competition Rules as set forth in Finding of Fact Nos. 6 and 7 above.
- 4) Decision No. 61272 should be vacated.

Upon making these findings of fact and conclusions of law, the Commission would next enter ordering paragraphs which grant APS' Application for Rehearing, vacate Decision No. 61272, stay the effectiveness of the Electric Competition Rules until further order of the Commission, grant exemptions to the Affected Utilities from compliance with the Electric Competition Rules until further order of the Commission, and which establish the above-described procedural steps of inviting further written comment and the scheduling of a procedural conference. Together, these findings, conclusions and orders would set the Commission back on the path toward meaningful electric competition.

IV. THE COMMISSION LACKS AUTHORITY TO PROMULGATE THE AMENDED RULES

During the rulemaking proceeding for the original Competition Rules, APS and other

1 Affected Utilities repeatedly demonstrated that the Commission lacked the authority to unilaterally
2 alter the State's policy of regulated monopoly. The Legislature, in H.B. 2663, enacted provisions
3 that "confirmed the Commission's authority" to undertake various measures in the transition to
4 competition in electric generation service. For the reasons argued in APS' August 28, 1998
5 Application for Rehearing of Decision No. 61071, however, the Commission simply had no
6 preexisting authority that the Legislature could "confirm." Accordingly, the language in H.B.
7 2663 "confirming" the supposed authority of the Commission fails to grant the Commission the
8 affirmative and substantive authority necessary to adopt Decision No. 59943, the "emergency" rule
9 amendments in Decision No. 61071, or the Amended Rules in Decision No. 61272.

10 Alternatively, if the Legislature did intend to affirmatively delegate certain
11 substantive statutory authority to the Commission, such delegation was necessarily limited by the
12 terms of the statute, and the Amended Rules far exceed the authority, if any, that was lawfully
13 delegated to the Commission. For example, H.B. 2663 does not allow the Commission to make
14 APS' participation in the competitive electric market dependent upon its divestiture of generation
15 or any other part of its current business. Nowhere in H.B. 2663 is the Commission authorized to
16 impose a non-statutory "penalty" or solar electric "tax" such as the \$.30 per kWh penalty
17 assessment under A.A.C. R14-2-1609.

18 19 **V. THE AMENDED RULES VIOLATE THE DUE PROCESS** 20 **RIGHTS OF "AFFECTED UTILITIES"**

21 The Amended Rules violate APS' constitutional rights to due process of law. First,
22 portions of the Amended Rules violate substantive due process because they are unreasonable,
23 arbitrary and capricious, lack a real and substantial relation to the goal of retail electric
24 competition, and deprive APS (without hearing) of the right to engage in competitive electric
25 activities heretofore authorized by its certificates of public convenience and necessity. These
26 include, among others, the provisions on divestiture, affiliate restrictions and the solar portfolio

1 standard (“SPS”). Second, the Amended Rules impose contradictory prohibitions and obligations
2 that simply cannot be reconciled. For example, R14-2-1606(D) requires an Affected Utility to
3 provide “information services” to “all eligible purchasers.” “Information Services” is defined as a
4 “Competitive Service” by the Amended Rules. R14-2-1616(B), however, flatly prohibits an
5 Affected Utility from providing “competitive services.” There are additional circular references
6 in both sections stating “to the extent allowed by these rules” or “except as authorized by these
7 rules” that render each section unintelligible as to the other section.

8 Third, fatal ambiguities afflict the Amended Rules. “Information Services” are
9 nowhere defined in the Amended Rules, apart from a “such as” reference in R14-2-1606(D)(6).
10 Indeed, Staff agreed in the certification proceeding for PG&E Energy Services, Docket No.
11 E-03595A-98-0389, that the term “information services” had no commonly agreed upon meaning
12 and that Staff itself had no definition of the term. Such inconsistencies, in addition to other vague,
13 ambiguous and contradictory provisions of the Amended Rules, as described in APS’ prior
14 comments attached hereto, violate APS’ due process rights.

15 The Amended Rules also purport to also require APS to provide certain Competitive
16 Services to competitors, such as providing meters, meter reading services, and billing and collection
17 services. Such services will require significant up-front investment in both equipment and
18 personnel. At the same time, however, the Amended Rules will force APS out of these lines of
19 business in two years. If two competitors are providing the Competitive Service in question, APS
20 could be forced out of the business even sooner regardless of the up front investment required to
21 comply with the Amended Rules. The Amended Rules do not provide that APS will recover costs
22 associated with its investment to provide such Competitive Services on an interim basis, and
23 therefore violate APS’ due process rights.

24 25 **VI. THE AMENDED RULES REPRESENT AN UNCOMPENSATED “TAKING”**

26 Although the Amended Rules continue to recognize that an Affected Utility shall

1 have “a reasonable opportunity for recovery of unmitigated Stranded Costs”, the Amended Rules
2 fail to address the “taking” of the both the exclusive nature of its present Certificate of
3 Convenience and Necessity (“CC&N”), and in the case of Competitive Services, even a non-
4 exclusive right to provide such services. The Amended Rules do not provide for compensation for
5 the taking of either exclusive of non-exclusive CC&Ns, create no mechanism to determine the
6 appropriate compensation due an Affected Utility for such taking, nor include the value of an
7 exclusive CC&N in the definition of “Stranded Costs.”

8 Second, the Amended Rules make no provision for the recovery of Stranded Costs
9 incurred after 1996 (including the significant cost of compliance with the Amended Rules), or in
10 connection with the expanded provision of non-generation services such as metering, meter
11 reading, and billing and collection which the Amended Rules now require APS to provide to
12 competitors, but only on an interim basis. The Amended Rules not only mandate that these
13 services be competitive, but further mandate at least a partial divestiture by Affected Utilities of
14 the very assets used to provide such services, and further mandate that APS provide certain
15 services to competitors for only a limited period of time. Moreover, to the extent the Commission
16 interprets the Amended Rules as authorizing less than a reasonable opportunity for full stranded
17 cost recovery, even using the Commission’s definition of stranded costs, the Amended Rules are
18 an uncompensated taking.¹

20 **VII. THE AMENDED RULES IMPAIR THE VESTED CONTRACT** 21 **RIGHTS OF “AFFECTED UTILITIES”**

22 The Amended Rules impair APS’ vested contract rights in two respects. First, under

23 ¹ To the extent that the Commission interprets the Amended Rules to limit recovery of the
24 Company’s regulatory assets or the recovery of costs associated with the Palo Verde Nuclear
25 Generating Station—all of which were subject to prior rate settlement agreements reached between
26 the Company and the Commission as reflected in Decision No. 57649 (Dec. 6, 1991), Decision
No. 58644 (June 1, 1994), and Decision No. 59601 (Apr. 24, 1996)—the Amended Rules would
rise to both an uncompensated taking and would violate the Contracts Clauses of the Arizona and
Federal Constitutions.

1 Arizona law, a CC&N is a contract with the state which cannot be abrogated without the payment
2 of just compensation. *See, e.g., Application of Trico Elec. Coop.*, 92 Ariz. 373, 377 P.2d 309
3 (1962). Second, Rule R14-2-1606(B) provides that after January 1, 2001, a Utility Distribution
4 Company may only purchase power through competitive bid (except for purchases made through
5 spot markets). This restriction substantially impairs existing power supply contracts (such as APS'
6 contracts with Citizens and Salt River Project), and there is no public urgency or need alleged or
7 shown for such impairment. The Amended Rules thus violate Article 1, § 10 of the United States
8 Constitution and Article II, § 25 of the Arizona Constitution as regards to APS' CC&Ns and
9 existing power supply contracts.

10
11 **VIII. THE AMENDED RULES DENY "AFFECTED UTILITIES"**
12 **EQUAL PROTECTION OF THE LAW**

13 The Amended Rules unreasonably discriminate against Affected Utilities without
14 rational basis. For example, Rule R14-2-1616 requires Affected Utilities to legally separate all
15 generation assets and competitive services from the Affected Utility's non-competitive electric
16 distribution business. The Amended Rules, however, require no such legal separation of ESPs,
17 even though these providers may provide monopoly electric and other public utility services in
18 Arizona and other states or jurisdictions. Further, Rule R14-2-1617 imposes extremely
19 burdensome affiliate transaction standards on Affected Utilities (and Utility Distribution
20 Companies), but does not impose similar restrictions on competing ESPs, some of which are
21 affiliates of entities providing monopoly service in other states or are otherwise in a position to
22 unfairly cross-subsidize. For example, Rule R14-2-1617(E) requires Affected Utilities and Utility
23 Distribution Companies to conduct expensive outside audits annually from 1999 through 2002,
24 even if there is no suspicion of affiliate abuses. This audit requirement, however, does not apply
25 to ESPs affiliated with a regulated entity other than an Affected Utility. The Amended Rules
26 provide no explanation or justification for disparate treatment of Affected Utilities.

1 **IX. THE AMENDED RULES VIOLATE THE ARIZONA ADMINISTRATIVE**
2 **PROCEDURE ACT**

3 The Amended Rules do not contain an adequate Economic, Small Business and
4 Consumer Impact Statement (“EIS”) as required by A.R.S. § 41-1057(2) and A.R.S. § 41-1055.
5 The incomplete EIS attached to the Decision is materially insufficient to meet the standards for
6 such statements as set forth in the Administrative Procedure Act and offers the Commission no
7 useful information on the true impacts of the Amended Rules. For example, the EIS contains no
8 analysis of the economic impact of the amendments to the SPS in R14-2-1609, despite the
9 Commission’s ad hoc extension of the SPS’ requirements to Standard Offer service after the year
10 2000 and the adoption of an “extra credit multiplier” scheme to purportedly mitigate the
11 implementation costs to electric utilities and consumers. Indeed, the Commission’s discussion of
12 the cost impacts in its Concise Explanatory Statement (“CES”) highlights that, despite the EIS
13 ignoring the issue, the ultimate economic impacts of the SPS was a very contentious issue.

14 Further, the EIS provides no explanation as to why Commission Staff could not
15 accumulate and analyze actual data on the impacts of the Amended Rules or why the “analysis” of
16 the EIS was limited to vague “qualitative” descriptions.² A.R.S. § 41-1055(C) requires that, if
17 supporting data is not available, the Commission must specifically explain the limitations and the
18 methods that were employed in an attempt to obtain the data. No such explanation is provided or
19 even attempted in the EIS.

20 Like the EIS, the CES is inadequate. For example, the CES concludes that R14-2-

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23 ² The United States Department of Energy, for example, recently conducted an exhaustive
24 study of the impact of the Clinton Administration’s proposed Comprehensive Electricity
25 Competition Act. The Department used a combination of its National Energy Modeling System
26 (NEMS) and TRADELEC, a model developed to evaluate competitive energy markets in more
 detail than the standard NEMS model. See Office of Economic, Electricity and Natural Gas
 Analysis & Office of Policy and International Affairs, *Comprehensive Electricity Competition Act: Supporting Analysis* (July 1998) at 2. Commission Staff has not indicated why it could not similarly model the impacts of the Amended Rules.

1 1616(B) should not be amended and addresses comments of parties filed prior to Staff's November
2 24, 1998 "Additional Comments" to the Amended Rules. Yet, in Staff's "Additional Comments",
3 the word "may" in Rule R14-2-1616(B) was replaced by the word "shall" in connection with
4 Affected Utilities providing Competitive Services under certain conditions. Such an amendment,
5 without consideration of comments from any of the affected parties, is indefensible, particularly
6 when the CES specifically concluded that "No change" to the originally worded language of R14-
7 2-1616(B) was warranted. Further, the CES contains no analysis of any of the exceptions to the
8 Recommended Opinion and Order, a fact that is crucial given that the only means to comment on
9 Staff's November 24, 1998 amendments was through such exceptions. Additionally, in many
10 instances the CES merely restates (or completely ignores) APS' position without any meaningful
11 analysis of the arguments raised.

12 The Commission also failed to observe the limitations of A.R.S. § 41-1022 and
13 A.R.S. § 41-1025 regarding amendments to noticed rulemakings in that the rules adopted are
14 substantially different from the noticed rules. For example, the requirement discussed above that
15 Affected Utilities "shall" offer ESPs Competitive Services under certain circumstances was added
16 only after the parties affected by the rule had submitted comments. The amendment was not in
17 response to any comment by an Affected Utility, and was apparently proposed unilaterally by Staff
18 through its November 24, 1998 "Additional Comments." Because such an amendment has a
19 significantly different effect than the noticed rule, at least as to Affected Utilities, the eleventh
20 hour amendment without opportunity to properly comment on the change is unlawful.

21 22 **X. THE AMENDED RULES VIOLATE THE RATE REDUCTION AGREEMENT**

23 The Rate Reduction Agreement ("Agreement") between APS and Commission Staff,
24 approved in Decision No. 59601 (April 24, 1996), prohibits any party from seeking to change
25 rates, other than as permitted in the Agreement, before July 2, 1999. The Amended Rules,
26 however, appear to contemplate such a change in rates. *See, e.g.*, R14-2-1604. Therefore, to the

1 extent that the Amended Rules are construed as requiring or authorizing a reduction in APS rates
2 that is effective prior to July 2, 1999, they would violate that Agreement.

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4 **XI. THE AMENDED RULES CREATE AN UNLAWFUL OBLIGATION TO SERVE**

5 In Arizona, the obligation of a public utility to serve is legally dependant on the
6 utility having an exclusive right to serve. *See James P. Paul Water Co. v. Ariz. Corp. Comm'n,*
7 *137 Ariz. 426, 671 P.2d 404 (1983).* Despite this authority, the Amended Rules continue to
8 require APS to shoulder the obligation to serve in areas in which APS has no exclusive rights
9 without adequate assurances that APS will be fairly compensated for its performance of this
10 obligation. This problem is compounded by expensive new mandates such as the SPS and the
11 bidding of Standard Offer generation—mandates which raise APS' costs with no corresponding
12 recovery mechanism.

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14 **XII. RULE R14-2-1609 OF THE AMENDED RULES**
15 **UNLAWFULLY INTERFERES WITH THE MANAGEMENT OF**
16 **“AFFECTED UTILITIES”, AND IS OTHERWISE**
17 **ARBITRARY AND UNREASONABLE**

18 In the original Competition Rules, the Commission set forth a SPS that, among other
19 things, required sellers of competitive retail energy to include a certain minimum amount of solar
20 energy in these competitive sales. In the Amended Rules, with virtually no discussion and
21 absolutely no economic analysis, the Commission adopted substantial revisions to the original rule
22 and extended the SPS to Standard Offer service after year the 2000. At the same time, the
23 Commission deleted the requirement that solar energy meet even minimal criteria for cost
24 effectiveness prior to raising the SPS.

25 For the same reasons set forth in APS's August 28, 1998 Application for Rehearing
26 (which is incorporated by reference), the Amended Rules still unlawfully interfere with the
investment decisions of management, and unlawfully and arbitrarily dictate specific renewable

1 technologies. Further, the Amended Rules impose different, but still arbitrary and unreasonable,
2 renewable percentages. In the “Economic, Small Business and Consumer Impact Statement”
3 (“EIS”) filed with the Amended Rules, the Commission fails to make a single reference to the
4 impact of increased compliance costs inherent in the SPS, and identifies as the only economic
5 impact increased business opportunities to manufacturers of solar technology. The failure to
6 address the SPS in the EIS is exacerbated because the Commission relies, without any record
7 support, on the “extra credit multipliers” scheme added to R14-2-1609 in the Amended Rules to
8 mitigate the compliance cost of the SPS. There is, however, no economic analysis of the costs
9 associated with the SPS, let alone the impact of the extra credit multipliers. The amendments to
10 R14-2-1609 and the SPS are arbitrary and capricious, and unreasonable.

11
12 **XIII. THE AMENDED RULES ARE NOT SUPPORTED BY**
13 **SUBSTANTIAL EVIDENCE DO NOT REFLECT REASONED**
14 **DECISION-MAKING, AND ARE ARBITRARY,**
15 **CAPRICIOUS, AND AN ABUSE OF DISCRETION**

16 All of the important elements of the Decision lack adequate evidentiary support in
17 the record for this docket and are unaccompanied by adequate findings of fact and conclusions of
18 law and the reasons and bases therefor. For example, there is no evidence in the record that the
19 Amended Rules in their present form will provide the benefits, economic or otherwise, that are the
20 objectives of Arizona’s transition to retail competition. Similarly, there is no evidence in the
21 record that the “labeling” requirements set forth in R14-2-1618 are either reasonably available,
22 helpful to consumers, or wanted by consumers. There is, however, evidence in the record that
23 much of the information required is not reasonably available, is not particularly helpful to
24 consumers, and could cause confusion. Divestiture is still another example where the Amended
25 Rules fly in the face of uncontroverted evidence that such mandatory divestiture is beyond the
26 Commission’s jurisdiction, unnecessary, impractical, and perhaps even impossible. Moreover, the
Commission has failed to articulate a reasoned explanation, in the CES and otherwise, for why the

1 approaches to these issues set forth in the Decision are superior to alternative approaches offered
2 by APS and other parties. The Commission's action in ignoring or contradicting the evidence in
3 the record when adopting the Amended Rules is arbitrary, capricious and an abuse of discretion.

4
5 **XIV. THE DECISION ADOPTING THE AMENDED RULES**
6 **DID NOT COMPLY WITH THE COMMISSION'S RULES OF**
7 **PROCEDURE**

8 A.A.C. R14-3-110(B) requires that in all proceedings heard by a Hearing Officer, the
9 Hearing Officer is obligated to submit to the Commission his or her "recommendation . . . unless
10 otherwise ordered by the Commission." The Procedural Order accompanying the Recommended
11 Order, however, indicated that the Recommended Opinion and Order was not the
12 "recommendation" of either of the Presiding Hearing Officers, but was instead an Opinion and
13 Order that the Hearing Division believed was ordered by Decision No. 61257 (November 25,
14 1998).

15 Although A.A.C. R14-3-110(B) may allow the Commission to bypass the
16 recommended order requirement under certain circumstances, Decision No. 61257 neither
17 authorized nor directed such a procedural shortcut. Decision No. 61257, although addressing the
18 timing of a Recommended Opinion and Order, did not dictate that the Hearing Division issue an
19 Opinion and Order that was not, in fact, their recommendation. Accordingly, the Hearing Division
20 should have completed its analysis of the record, including new or additional comments submitted,
21 and provided a Recommended Opinion and Order which was the impartial recommendation of the
22 presiding officers in accordance with the Commission's Rules of Procedure.

23 **XV. THE AMENDED RULES INVADE THE**
24 **EXCLUSIVE JURISDICTION OF FERC**

25 The "buy-through" transactions contemplated by A.A.C. R14-2-1604 include a
26 transmission component subject to the exclusive jurisdiction of FERC. *See* FERC Docket No.

1 RM95-8-000 (March 29, 1995), at 99-100. The Amended Rules clearly assert full Commission
2 jurisdiction over such agreements despite FERC's assertion of preempting jurisdiction over the
3 transmission component of "buy-through" transactions.

4
5 **XVI. THE AMENDED RULES CONSTITUTE AN**
6 **UNCONSTITUTIONAL BILL OF ATTAINDER**

7 The Amended Rules impose punitive conditions on Affected Utilities, which are a
8 class of specifically-named public service corporations under the Amended Rules, without
9 affording Affected Utilities a judicial trial for the regulatory abuses that are conclusively presumed
10 by the Commission. *See, e.g.*, Rule R14-2-1616 and -1617. Accordingly, the Amended Rules
11 violate the Bill of Attainder Clause in Article I, § 10 of the United States Constitution and in
12 Article II, § 25 of the Arizona Constitution.

13 **XVII. THE AMENDED RULES CONTAIN PROVISIONS**
14 **UPON WHICH APS HAD NO OPPORTUNITY TO COMMENT**
15 **OR WHICH CONTRADICT STAFF'S POSITIONS IN OTHER**
16 **COMPETITION-RELATED PROCEEDINGS**

17 Although perhaps not of the same gravity as many of the constitutional or procedural
18 failings of the Amended Rules identified above, the extent of inconsistencies, contradictions and
19 drafting problems in the Amended Rules are a further illustration as to why hurried
20 implementation of the Amended Rules in their present form and on the eve of the competition start
21 date is not in the public interest. Specifically, the Amended Rules contain new or modified
22 provisions from the "emergency" rules adopted by Decision No. 61071, provisions which
23 contradict the position that Staff and/or the Commission has taken in other competition-related
24 proceedings, or provisions which are mooted by the passage of time and should no longer be
25 included in the Amended Rules. These new or contradictory provisions include:
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1 A. A.A.C. R14-2-1601(10):

2 The amendment defines Direct Access Service Request (“DASR”) to include
3 requests by the end-user. However, Staff’s changes to the Company’s proposed Schedule 10,
4 which were adopted by the Commission, eliminate the possibility of a direct access request by a
5 end-use customer. Thus, the words “or the customer” should be deleted from the end of the
6 proposed definition.

7 B. A.A.C. R14-2-1601(22):

8 “Aggregators” is defined by A.A.C. R14-2-1601(2) such that they are ESPs. Thus,
9 they can not be both included and excluded from the definition of “Load Serving Entity.”
10 Accordingly, the words “or aggregators” should be deleted from the end of this definition.

11 C. A.A.C. R-14-2-1603(A):

12 As noted above, Staff’s and the Commission’s previous changes to the Company’s
13 Schedule 10 effectively eliminate the concept of self-aggregation by requiring that a Self-
14 Aggregator purchase energy only from a certified ESP. As the ESP would be required to have a
15 Service Acquisition Agreement with APS, there is no need for the language in this rule that states:
16 “and self-aggregators are required to negotiate a Service Acquisition Agreement consistent with
17 subsection G(6).”

18 Second, Meter Service Providers (“MSPs”) and Meter Reader Service Providers
19 (“MRSPs”) are also defined as ESPs in the Amended Rules. Although such designation is
20 generally appropriate, it would be unnecessary to have two service acquisition agreements when
21 the MSP and/or MRSP is a subcontractor of the load-serving ESP and is covered by the latter’s
22 service acquisition agreement.

23 D. A.A.C. R14-2-1604(A):

24 The language in the second full sentence to this amendment (allowing 180 days from
25 the filing of the DASR to the initiation of competitive service) is inconsistent with prior actions of
26 this Commission and is unreasonably intended to benefit only special contract customers at the

1 expense of all other potentially eligible customers. The proposed language conflicts with the
2 specific and controlling provisions of APS' Schedule 10, which has been approved by this
3 Commission.

4 For example, Cyprus Climax Metals ("Cyprus") has a special contract with APS that
5 expires May 1, 1999. But for the approval of APS' Schedule 10, this amendment could require
6 APS to reserve some 10-15% of its otherwise eligible load for Cyprus, which would make a
7 mockery of the concept "first-come, first served." The "180 days" should be replaced by "60
8 days", which the Commission approved in the Company's recent Schedule 10 filing.

9 E. A.A.C. R14-2-1604(A)(1):

10 The phrase "single premise" must be added after the words "non-coincident" to make
11 this section consistent with A.A.C. R14-2-1604(A)(2).

12 F. A.A.C. R14-2-1604(A)(3); 1604(B)(4); 1604(C); 1607(D); and 1610(H):

13 These provisions all contain filing dates that have already passed (and thus are moot)
14 and which are not necessary to understand other provisions of the Amended Rules and should
15 accordingly be deleted.

16 G. A.A.C. R14-2-1606(D):

17 Staff's position in the PG&E Energy Services certification proceeding, Docket No.
18 E-03595A-98-0389, requires that the following phrase be added after the colon in the second
19 sentence of the section: "such tariffs may combine one or more competitive services within any
20 other competitive service."

21 H. A.A.C. R14-2-1606(H)(2):

22 This provision is inconsistent with Staff's position in the PG&E proceeding, except
23 as to distribution and other non-competitive services. Accordingly, the following language should
24 be substituted: "The unbundled rates for Non-Competitive Services shall reflect the costs of
25 providing the services."
26

1 I. A.A.C. R14-2-1607(G):

2 To clarify that special contract customers are not automatically entitled to special
3 benefits even after the expiration of their contracts, the word “tariffed” should be inserted before
4 “rate treatment” as well as after the word “current” and before “rates.”

5 J. A.A.C. R14-2-1616(B):

6 As noted above, the Amended Rules fail to define or address “information services.”
7 APS is apparently required to provide this service under Rule 1606(D) but at the same time
8 prohibited from providing it under 1616(B). The Commission should delete all but the first
9 sentence of Rule 1616(B), delete “by these rules or” from that first sentence, and delete Rule
10 1606(D)(6). Further, the portion of this section allowing the customer to chose billing options is
11 inconsistent with Staff’s position, that the ESP shall determine which of the available billing
12 options would be employed.

13 K. A.A.C. R14-2-1618(B):

14 To conform to Staff’s position in the PG&E certification proceeding—that a “Load
15 Serving Entity” only had to disclose information reasonably available to it and that with regard to
16 (B)(4)-(6) a “don’t know” would comply with this provision—the words “to the extent reasonably
17 available to the Load Serving Entity” should be added after the word “that”, and an additional
18 sentence should be added that states: “If the Load Serving Entity does not know with reasonable
19 accuracy the information listed above, it shall so indicate in its consumer information label.”

20
21 **XVIII. CONCLUSION**

22 The Amended Rules cannot be realistically implemented as originally scheduled by
23 the Commission. As presently drafted, they will only impede the introduction of meaningful retail
24 electric competition. Further, the Amended Rules continue to exceed the Commission’s authority
25 in many respects. The Amended Rules are also procedurally invalid and confiscate property
26 vested in an Affected Utility. Finally, the Amended Rules impose arbitrary, unreasonable and

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CERTIFICATE OF SERVICE

The original and ten (10) copies of the foregoing document were filed with the Arizona Corporation Commission on this 31st day of December, 1998, and service was completed by mailing or hand-delivering a copy of the foregoing document this 31st day of December, 1998 to all parties of record herein.

Sharon Madden / JD
Sharon Madden

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EXHIBIT A



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July 6, 1998
HAND DELIVERED

Ray T. Williamson
Acting Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

**Re: Proposed Revisions to Electric Competition Rules
(Docket No. RE-00000C-94-0145)**

Dear Ray:

Enclosed please find Arizona Public Service Company's ("APS" or "Company") initial comments on Staff's proposed revisions to the Commission's electric competition rules ("Revised Rules"). Because of time constraints, I can not represent to you that this enclosure represents all of the Company's comments on the Revised Rules. Moreover, it is also possible that in the process of attempting to provide Staff with a "redlined" version of the Revised Rules, we may have made one or more errors in the specific language proposed by the Company. I apologize in advance for these deficiencies.

At your earliest convenience, I would like to meet with you and the other involved Staff members to discuss the Revised Rules in greater detail. I can assure you that there is no better way of producing a final product that, although perhaps not substantively to the Company's liking, will at least be devoid of obvious internal inconsistencies and unnecessary ambiguities.

The majority of the Company's comments can be summarized into five (5) principal categories:

- 1) Resolving Internal Inconsistencies: R14-2-1606, R14-2-1613, and R14-2-1616 are internally inconsistent. APS is required to provide services under one regulation that it is prohibited from providing under another. Aspects of metering that are declared to be competitive under one regulation are restricted to "Affected

Utilities" under another. APS and other "Affected Utilities" are required to provide a bundled Standard Offer and also prohibited from providing some of the very services that necessarily go into that bundled service (i.e., metering and billing). APS has attempted to identify and eliminate these inconsistencies while preserving the overall intent of the Revised Rules.

- 2) Ambiguities in the Use of Defined Terms: Defined terms are not used consistently in the text of the Revised Rules, or critical and oft-used terms are left undefined. At times, it is appropriate to modify the text to fit the definition of the term being used, while at other times the Company has modified the definition to match its use in the subsequent text.
- 3) Unrealistic and Counterproductive Reporting and Labeling Requirements: The information requirements in Revised Rules 1612, 1614, and 1618, although well intentioned, are so impractical as to prove counterproductive. Prospective competitors may either avoid Arizona because of these onerous provisions, or simply ignore them. The result - less competition and less useful information for consumers than would otherwise be the case.
- 4) Solar Portfolio Standard: APS has long maintained that the current standard is unrealistic and overly costly to consumers, especially in the earlier years when solar energy is likely to be particularly expensive relative to the competitive market. For example, the cost to APS during the first three years would exceed \$160 million. Although the Revised Rules are an improvement in some respects, they have not altered the fundamentally impractical nature of the initial SPS.
- 5) Affiliate Rules: APS does not oppose the long term objective of having structural and legal separation of competitive generation from regulated aspects of the electric business.¹ Similarly, the regulated entity should neither subsidize nor show undue favoritism to the competitive generation affiliate. However, unnecessary restrictions and duplicative reporting and recordkeeping further neither objective. They simply drive up the costs of incumbent providers, reduce legitimate economics of scale and scope and allow new entrants to charge higher prices to

¹ APS would note that no other regulated industry in Arizona has been subject to these restrictions even though some have long records of anticompetitive behavior and subsidization of competitive services - factors absent in the electric utility industry in this state.

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July 6, 1998
Page 3

Arizona consumers. Moreover, there is no reason why all competitive providers in Arizona should not be subject to the same rules. During the recent "stranded cost" hearing, representatives of PG&E and Enron did not, upon specific questioning on this point, object to having the same affiliate restrictions apply to both "Affected Utilities" and ESPs.

I again ask for a face-to-face meeting to resolve the issues raised by the Revised Rules. If, as I understand to be the case, the Commission intends to enact emergency rules, it is critical that we resolve as many issues as possible before a final recommendation is presented to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald R. Johnson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

14-2-1601 Definitions

1. "Affected Utilities" means the following public service corporations providing electric service: Tucson Electric Power Company, Arizona Public Service Company, Citizens Utilities Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement Company, and Morenci Water and Electric Company.

~~2.~~ 2. "Aggregator" means an entity that combines electric customers into a purchasing group. ESP that combines individual electric customers or customer accounts into one or more purchasing groups.

[The proposed change avoids including "Self-aggregation" and "Schedule Coordinator" within the scope of this definition and emphasizes that third-party aggregators are themselves ESPs. It also recognizes that less than all of a customer's electric accounts may be eligible for aggregation under R14-2-1604(B).]

~~3.~~ 3. "Billing and Collection Service Provider" (BCSP) means an ESP that provides billing and collection services to a UDC or another ESP. However, the billing and collection done by an Affected Utility or UDC does not result in the UDC or Affected Utility becoming a BCSP.

[Because competitive billing and collection are to be stand-alone competitive services and many Commission rules are related to billing and collection issues, it is appropriate to have a definition for those entities that provide such services. At the same time, it is necessary to modify the definition so as to allow "Affected Utilities" and, subsequently, UDCs to bill and collect for "Standard Offer" and other non-competitive services which the UDC is obligated to provide. These modifications will help resolve the current internal contradictions among various of the rules, including R14-2-1606, R14-2-1613 and R14-2-1616.]

2.3.4 "Bundled Service" means electric service provided as a package to the consumer including all generation, transmission, distribution, ancillary and other services necessary to deliver and measure useful electric energy and power to consumers.

3.4.5. "Buy-through" refers to a purchase of electricity by an Affected Utility at wholesale for a particular retail consumer or aggregate of consumers or at the direction of a particular retail consumer or aggregate of consumers.

5.6. "Competition Transition Charge" (CTC) is a means of recovering Stranded Costs from the customers purchasing of competitive services.

6.7. "Control Area Operator" is the operator of an electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the Interconnection.

~~7.8.~~ "Current Transformer" (CT) is an electrical device used to provide a measurement of energy consumption for metering purposes.

8.9. "Delinquent Accounts" means customer accounts with outstanding overdue payment obligations.

[Outstanding obligations should not be considered "delinquent" until after they are due.]

~~9.~~ "Distribution Primary Voltage" is voltage at or above 600 volts (600V) through and including 25 kilovolts (25 kV). (Separating distribution primary voltage into distribution and transmission just for purposes of metering is confusing and conflicts with FERC's separation at 69 kV and above for transmission and below 69 kV as distribution. APS recommends that R14-2-1613(I),(10) and (11) be modified (as indicated in those sections) to state which distribution primary voltage PT's and CT's are to be owned by "Affected Utilities" or UDC's.)

~~4.10.~~ 4.10. "Distribution Service" means the delivery of electricity to a retail consumer through wires, transformers, and other devices that are not classified as transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission; Distribution Service excludes meters and meter reading. Metering Services, Meter Reading Services, and billing and collection Services, as those terms are used herein.

[This change incorporates prior and subsequently defined terms into the definition of "distribution service" and, as discussed above, is attempting to avoid internal inconsistency concerning the scope of competitive metering and meter reading, as well as competitive B&C services. For example, R14-2-1606 requires APS to provide metering and meter reading services. However, under proposed R14-2-1616, APS is prohibited from providing these same services!]

~~11.~~ 11. "Electronic Data Interchange" (EDI) is a computer program of national standards that establishes a specific format for electronically transmitted metering data. the computer-to-computer electronic exchange of business documents using standard formats which are widely recognized both nationally and internationally.

[This change conforms the definition of EDI with that used by the EDI Service Bureau in its technical manual, EDI Basics.]

~~5.12~~ 5.12 "Electric Service Provider" means a company supplying, marketing, or brokering at retail any of the competitive services described in R14-2-1605 of R14-2-1606. . ESPs include Aggregators, MRSPs, MSPs, and BSPs, as those terms are defined herein.

[These changes: (1) identify the acronym "ESP", which is used extensively throughout the rules; (2) clarify the status under the rules of various providers of competitive services other than competitive electric generators; and (3) draw a clear distinction between ESPs and UDCs. As currently proposed, a UDC would also fall under the definition of an ESP because non-competitive services are included under R14-2-1606.]

6. ~~"Eligible Demand" means the total consumer kilowatts of demand which an Affected Utility must make available to competitive generation under the terms of this Article or the consumer kilowatts of demand provided competitively in an Affected Utility's distribution territory, whichever is greater.~~

~~13.~~ 13.—"ESP Service Acquisition Agreement" means a contract between an ESP and an UDC to deliver power to retail end users or between an ESP and a Scheduling Coordinator to schedule transmission service.

[This change conforms the name of the term being defined and its scope with the term and scope used in the text of the new rules at 1602(F)(3).]

14. "Generation" means the production of electric power or contract rights to wholesale electric power.

15. "Installed Adequate Reserve" means the difference between the Electric Service Providers' expected annual peak capability and its expected annual peak demand as expressed as a percentage of the annual peak demand.

16. "Load-serving Entity" means an ESP Affected Utility or UDC, excluding a meter service or meter reading provider.

~~17.~~ 17.—"Load Profiling" is a process of estimating customers' hourly energy consumption based on measurements of similar customers.

18. "Meter Service Provider" (MSP) means an entity providing Metering Service, as that term is defined herein.

[Because metering service is a distinct competitive service from meter reading service, there should be a separate definition for those entities that provide such service.]

~~18.19.~~ "Meter Reading Service Provider" (MRSP) means an entity providing Meter Reading Service, as that term is defined herein and which that reads meters, performs validation, editing, and estimation on raw meter data to create validated meter data; translates validated data to an approved format; posts this data to a Sserver for retrieval by billing agents; manages the Sserver; exchanges data with market participants; and stores meter data for problem resolution.

[Incorporates defined terms into this definition to avoid confusion and ambiguity. Moreover, if "server" is intended to be a defined term, as this Paragraph implied, it is not defined anywhere in the rules.]

19. "Meter Reading Service" means all functions related to the collection and storage of consumption data for non-Standard Offer and other customers of non-competitive electric services. (Meter Reading for Standard Offer and other non-competitive electric service customers remain regulated.)

20. "Metering Service" means all functions related to measuring electricity consumption for non-Standard Offer customer, excepting those functions related to distribution primary voltage CT's and PT's above 25 kV. (PT's and CT's above 25 kV and Standard Offer metering remain regulated.)

21. Nuclear Fuel Decommissioning includes nuclear fuel disposal. (Conforms definition to that adopted in Decision No. 60977.)

~~22.~~22. "OASIS" is Open Access Same-Time Information System, which is an electronic bulletin board where transmission related information is posted for all interested parties to access via the Internet.

~~23.~~ "Operating Reserve" means the generation capability above firm system demand used to provide for regulation, load forecasting error, equipment forced and scheduled outages, and local area protection.

~~24.~~24. "Potential Transformer" (PT) is an electrical device used to step down primary voltages to 120 volts for metering purposes.

~~25.~~25. "Scheduling Coordinator" means an entity designated by the Commission that provides schedules for power transactions over transmission or distribution systems to the party responsible for the operation and control of the transmission grid, such as a Control Area Operator, ISA or ISO.

(This change recognizes the fact that schedule coordination is solely a transmission function and puts the Commission in charge of determining both the number and qualifications of scheduling coordinators. Allowing either too many scheduling coordinators or unqualified scheduling coordinators will threaten system reliability and efficiency.)

~~26.~~26. "Self-Aggregation" is the action of a retail customer that combines its own-metered loads into a single purchase block.

~~27.~~27. "Standard Offer" means Bundled Service offered to all consumers in a designated area at regulated rates.

~~8.28.~~ **8.28.** -"Stranded Cost" means includes:

- a. the verifiable net difference between:
 - a i The value of all the prudent jurisdictional assets and obligations necessary to furnish electricity (such as generating plants, purchased power contracts, fuel contracts, and regulatory assets), acquired or entered into prior to the adoption of this Article, under traditional regulation of Affected Utilities; and
 - b ii The market value of those assets and obligations directly attributable to the introduction of competition under this Article.
- b. **reasonable costs necessarily incurred by an Affected Utility to effectuate divestiture of its generation assets; and**
- c. **reasonable employee severance and retraining costs necessitated by electric competition, where not otherwise provided.**
- d. **other transition costs as approved by the Commission.**

(Consistent with Decision No. 60977.)

~~9.29.~~ **9.29.** "System Benefits" means Commission-approved utility low income, demand side management, environmental, renewables, customer education, and nuclear power plant decommissioning programs. *(Funding of customer education should be included in system benefits.)*

~~30.~~ **30.** ~~"Transmission Primary Voltage" is voltage above 25 kV.~~ *(See APS comment above on Distribution Primary Voltage.)*

~~10.31.~~ **10.31.** "Unbundled Service" means electric service elements provided and priced separately, including, but not limited to, such service elements as generation, transmission, distribution, metering, meter reading, billing and collection and ancillary services. Unbundled Service may be sold to consumers or to other Electric Service Providers.

~~32.~~ **32.** "Utility Distribution Company" (UDC) means the regulated electric utility entity that constructsoperates and maintains the distribution wires system for the delivery of power from the generation market to the end-user to the end-user's point of delivery on the distribution system. For purposes of R14-2-1617, UDC also includes any affiliate of an ESP that would be deemed a UDC if it were operating in Arizona.

[Who constructs or even owns the distribution system (which is far more than just "wires") is irrelevant to the use of this term in the rules - operational control is the key. This also provides for the equal application of R14-2-1617.]

~~33.~~ **33.** "Utility Industry Group" (UIG) refers to a utility industry association that establishes national standards for data formats.

34. "Universal Node Identifier" is a unique, permanent, identification number assigned to each service delivery point.

R14-2-1602. Filing of Tariff by Affected Utilities.

A. Each Affected Utility shall file tariffs consistent with this Article by December 31, 1997.

R14-2-1603. Certificates of Convenience and Necessity.

A. A. Any Electric Service Provider intending to supply services described in R14-2-1605 or R-14-2-1606, other than services subject to federal jurisdiction, shall obtain a Certificate of Convenience and Necessity from the Commission pursuant to this Article, however; a Certificate is not required to offer information services or billing and collection services, **or self aggregation.** ~~An Affected Utility does not need to apply for a Certificate of Convenience and Necessity for any service provided as of the date of adoption of this Article within its distribution service territory. An Affected Utility is deemed to already have a Certificate of Convenience and Necessity for any competitive service provided as of the date of adoption of this Article within its distribution service territory.~~

[There is no reason to make "Affected Utilities" reapply for competitive services that they can already lawfully provide under their current CC&N. No party to these proceedings has ever suggested otherwise, and the purpose of this Staff change is unexplained and will almost certainly threaten the start of competition on 1/1/99. For the reasons explained by APS in prior comments, this language is superior to that in the original rule although the purpose is obviously the same.]

B. Any company desiring such a Certificate of Convenience and Necessity shall file with the Docket Control Center the required number of copies of an application. Such Certificates shall be restricted to geographical areas served by the Affected Utilities as of the date this Article is adopted and to service areas added under the provisions of R14-2-1611 (B). In support of the request for a Certificate of Convenience and Necessity, the following information must be provided:

1. A description of the electric services which the applicant intends to offer;
2. The proper name and correct address of the applicant, and
 - a. The full name of the owner if a sole proprietorship,
 - b. The full name of each partner if a partnership,
 - c. A full list of officers and directors if a corporation, or
 - d. A full list of the members if a limited liability corporation;
3. A tariff for each service to be provided that states the maximum rate and terms and conditions that will apply to the provision of the service;

4. A description of the applicant's technical ability to obtain and deliver electricity and provide any other proposed services;
5. Documentation of the financial capability of the applicant to provide the proposed services, including the most recent income statement and balance sheet, the most recent projected income statement, and other pertinent financial information. Audited information shall be provided if available;
6. ~~6.~~—A description of the form of ownership (e.g., partnership, corporation);
7. A transaction privilege license from the state of Arizona and from each political subdivision thereof (having a privilege or franchise tax) in which the applicant seeks authority to act as a MSP or MRSP, or will act as a BCSP.

[The Commission should insure that the certification of an ESP will not result in a loss of tax jurisdiction by the State or any subdivision thereof.]

8. An explanation of how the applicant intends to comply with the requirements of R14--1617, or a request for waiver or modification thereof with an accompanying justification for any such requested waiver or modification;

[This change is consistent with the Company's position that any affiliate restrictions should equally apply to all market competitors. During the course of the Stranded Cost hearing, those witnesses on behalf of PG&E and Enron agreed to such equality of treatment.]

7.9. Such other information as the Commission or the Staff may request.

C. The Applicant shall report in a timely manner during the application process any change(s) in the information initially reported to the Commission in the application for a Certificate of Convenience and Necessity.

C.D. At the time of filing for a Certificate of Convenience and Necessity, each applicant shall notify the Affected Utilities in whose service territories it wishes to offer service of the application by serving a complete copy of the application on the Affected Utilities. Each applicant shall provide written notice to the Commission that it has provided notification to each of the respective Affected Utilities at the time of application.

E. The Commission after reviewing the application, may provide approval of the Certificate of Convenience and Necessity for up to 12 months if the applicant has limited or no experience in providing the retail electric service that is being requested. An applicant receiving such interim approval shall have the responsibility to apply for appropriate extensions.

D.F. The Commission may deny certification to any applicant who:
1. Does not provide the information required by this Article;

2. Does not possess adequate technical or financial capabilities to provide the proposed services;

~~4.~~ ~~3. Does not have service acquisition agreements with a utility distribution company and scheduling coordinator, if the applicant is not its own scheduling coordinator. Does not have an ESP Service Acquisition Agreement with a Utility Distribution Company and Scheduling Coordinator, if the applicant is not its own Scheduling Coordinator.~~

[Conforms language in text with terms defined in definition section of the rules.]

3.4. Fails to provide a performance bond, if required.

5. Fails to demonstrate that its certification will serve in the public interest.

E. G. Every Electric Service Provider obtaining a Certificate of Convenience and Necessity under this Article shall obtain certification subject to the following conditions:

1. The Electric Service Provider shall comply with all Commission rules, orders, and other requirements relevant to the provision of electric service and relevant to resource planning;
2. The Electric Service Provider shall maintain accounts and records as required by the Commission;
3. The Electric Service Provider shall file with the Director of the Utilities Division all financial and other reports that the Commission may require and in a form and at such times as the Commission may designate;
4. The Electric Service Provider shall maintain on file with the Commission all current tariffs and any service standards that the Commission shall require;
5. The Electric Service Provider shall cooperate with any Commission investigation of customer complaints;
6. The Electric Service Provider shall obtain all necessary permits and licenses;
- ~~8.7.~~ Failure to comply with any of the above conditions may result in recession of the Electric Service Provider's Certificate of Convenience and Necessity.

E.H. In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the applicant may collect from its customers, or order that such advances or deposits be held in escrow or trust.

R14-2-1604. Competitive Phases.

Each Affected Utility shall make available at least 20% of its 1995 system retail peak demand for competitive generation supply to all customer classes (including residential and small commercial consumers) not later than January 1, 1999. If data permit, coincident annual peak demand shall be used; otherwise noncoincident peak data may be used.

1. No more than 1/2 of the Eligible Demand may be procured by consumers, each of whose total competitive contract demand is greater than 3 MW.
2. At least 15% of the Eligible Demand shall be reserved for residential consumers.
3. Aggregation of loads of multiple consumers shall be permitted.

A. ~~A.~~ — All Affected Utility customers with peak demand load minimum demands of 1MW or greater through a single point of delivery, up to 20% to the Affected Utility's 1995 peak demand will be eligible for competitive electric services no later than January 1, 1999.

[This change reflects the fact that individual load of less than 1 MW can not be effectively scheduled. Aggregated loads involving multiple points of delivery are covered in the next paragraph.]

~~B.~~ — Each Affected Utility shall make available at least 50% of its 1995 system retail peak demand for competitive generation supply to all customer classes (including residential and small commercial consumers) not later than January 1, 2001. If data permit, coincident peak annual demand shall be used; otherwise noncoincident peak data may be used.

1. No more than 1/2 of the Eligible Demand may be procured by consumers, each of whose total competitive contract demand is greater than 3 MW.
2. At least 30% of the Eligible Demand shall be reserved for residential consumers.
3. Aggregation of loads of multiple consumers shall be permitted.

B. ~~B.~~ — Groups of Affected Utility customers with individual single premise peak load demands of 40 100 kW or greater aggregated into a combined load of 1 MW or greater will be eligible for competitive electric services no later than January 1, 1999. ~~If peak load data are not available, the 40 kW criterion can be determined to be met if the customer's usage exceeded 16,500 kWh in any month within the last twelve consecutive months.~~ From January 1, 1999, through December 31, 2000, aggregation as defined above, of new competitive customers will be allowed until such time as 20% of the Affected Utility's 1995 system peak demand is served by competitors competitive generation providers. At that point all additional aggregated customers must wait until January 1, 2001, to obtain competitive service.

[These changes: (i) reflect the minimum load requirements (on an aggregated basis) discussed above; (2) change the qualifier "individual" to one used in APS' and other utilities' tariffs, i.e., "single premise;" (3) raise the size of aggregatable loads to 100 kW in an effort to keep the first wave of such loads within a manageable level; (4) conform the kwh equivalent

of kW load with that used by Staff in R14-2-1613(I); (5) and clarify both that existing "Standard Offer" customers of an Affected Utility can, if eligible for competitive service, chose to be served under an Affected Utility's competitive rates and that the relevant competitive service for purposes of determining the 20% cap is competitive generation.

~~C. Prior to 2001, no single consumer shall receive more than 20% of the Eligible Demand in a given year in an Affected Utility's service territory.~~

C. Each Affected Utility shall offer a residential phase-in program with the following components:

1. A minimum of 1/2 of 1% of residential customers will have access to competitive electric services on January 1, 1999. The number of customers eligible in the residential phase-in program shall increase by an additional 1/2 of 1% every quarter until January 1, 2001.
2. Access to the residential phase-in program will be on a first-come, first-served basis. The Affected Utility shall create and maintain a waiting list to manage the residential phase-in program.
3. Load profiling may be used; however, residential customers participating in the residential phase-in program may choose other metering options offered by their electric service provider consistent with the Commission's rules on metering.
4. Each Affected Utility shall file a Residential Phase-In Program Proposal to the Commission for approval by Director, Utilities Division by September 15, 1998. As a minimum, the Residential Phase-In Program Proposal will include specifics concerning the Affected Utility's proposals:
 - a. Process for customer notification of Residential Phase-In Program;
 - b. Selection and tracking mechanism for customers based on first-come, first-served method;
 - c. Customer notification process and other information services to be offered; and,
 - d. Load profiling methodology and actual load profiles, if available.
5. Each Affected Utility and/or ESP providing competitive generation, as applicable, shall file quarterly Residential Phase-In Program reports within 45 days of the end of each quarter, beginning January 1, 1999 and ending January 1, 2001. (Clarifies when reports are to begin and end.) As a minimum, these quarterly reports shall include:

kW criterion is unacceptable, would be to limit the total aggregated load that can choose competitive only to 200 MW.

- a. Both ESP's and Affected Utilities - The number of customers and the load currently enrolled in Residential Phase-In Program by energy service provider;
- b. The Affected Utilities - The number of customers currently on the waiting list;
- c. Both the ESP's and the Affected Utilities - A description of all customer education programs and other information services including a discussion of the effectiveness of the programs; and,
- d. Both the ESP's and the Affected Utilities - An overview of any comments and survey results from participating residential customers.

["Affected Utilities will not have all the requested information, and thus it is necessary to require the ESPs to also report on most of these items. Subparagraph (d) clarifies that ESPs and "Affected Utilities" need only provide otherwise available information.]

~~D. Each Affected Utility shall file a report detailing possible mechanisms to provide benefits, such as rate reductions of 3% - 5%, to all customers determined not to be eligible for competitive electric services directly or through aggregation in a manner consistent with R14-2-1604 (B).~~

[APS would strike this provision. The various requirements of these rules do nothing but increase the costs of "Affected Utilities." APS is aware of no "mechanisms" for decreasing rates other than a formal rate case or a voluntary rate agreement with a particular "Affected Utility."]

~~D. Each Affected Utility shall make available all of its retail demand for competitive generation supply not later than January 1, 2003.~~

~~E.D. All customers shall be eligible entitled to obtain competitive electric services no later than January 1, 2001.~~

~~E. By the date indicated in R14-2-1602, Affected Utilities shall propose for Commission review and approval how customers will be selected for participation in the competitive market prior to 2003.~~

~~1. Possible selection methods are first-come, first-served; random selection via a lottery among volunteering consumers; or designation of geographic areas.~~

~~2. The method for selecting customers to participate in the competitive market must fairly allow participation by a wide variety of customers of all sizes of loads.~~

~~F.E. 3. All customers who produce or purchase at least 10% of their annual electricity consumption from photovoltaic or solar thermal resources installed in Arizona after January 1, 1997 shall be~~

selected for participation in the competitive market if those customers apply for participation in the competitive market. Such participants count toward the minimum requirements in R14-2-1604 (A) and R14-2-1604 (B).

~~4. The Commission Staff shall commence a series of workshops on selection issues within 45 days of the adoption of this Article and Staff shall submit a report to the Commission discussing the activities and recommendations of participants in the workshops. The report shall be due not later than 90 days prior to the date indicated in R14-2-1602.~~

F.G.F. Retail consumers served under existing contracts are eligible to participate in the competitive market prior to expiration of the existing contract only if the Affected Utility and the consumer agree that the retail consumer may participate in the competitive market.

G.H.G. An Affected Utility may engage in buy-throughs with individual or aggregated consumers. Any contract for a buy-through effective prior to the date indicated in R14-2-1604(A) must be approved by the Commission.

H.I.H. Schedule Modifications for Cooperatives

1. An electric cooperative may request that the Commission modify the schedule described in R14-2-1604(A) through R14-2-1604(D) (E) so as to preserve the tax exempt status of the cooperative or to allow time to modify contractual arrangements pertaining to delivery of power supplies and associated loans.
2. As part of the request, the cooperative shall propose methods to enhance consumer choice among generation resources.
3. The Commission shall consider whether the benefits of modifying the schedule exceed the costs of modifying the schedule.

R14-2-1605. Competitive Services.

A properly certificated Electric Service Provider may offer any of the following services under bilateral or multilateral contracts with retail consumers:

A. Generation of electricity from generators at any location whether owned by the Electric Service Provider or purchased from another generator or wholesaler of electric generation.

~~B. B. Any service described in R14-2-1606, except: Distribution Service and except services required by the Federal Energy Regulatory Commission to be monopoly services. Billing and collection services, information services, and self-aggregation services do not require a Certificate of Convenience and Necessity.~~

1. Distribution Service

2. Standard Offer Service

3. Metering and meter reading for Standard Offer Services:

4. Billing and collection for Standard Offer Services and other non-competitive services.

Services required by the Federal Energy Regulatory Commission Article to be monopoly services.

Billing and Collection Services and Self- Aggregation services do not require a Certificate of Convenience and Necessity.

["Standard Offer" Service is described in R14-2-2-1606, yet is clearly not a competitive service. Similarly, it is clearly contemplated by the rules that the UDC should continue to provide metering and billing services to "Standard Offer" customers (how else could "Standard Offer" service remain fully bundled as required by the rules). APS should also be permitted to bill customers for other non-competitive services. Finally, R14-2-1613 (I) limits certain functions to the UDC, namely Transmission Primary Voltage PTs and CTs. Without these changes, the rule is both confusing and contradictory to other rules within this same Article.]

R14-2-1606. Services Required To Be Made Available by Affected Utilities.

A. A.—Until the Commission determines that competition has been substantially implemented for a particular class of consumers (residential, commercial, industrial) so that all consumers in that class have an opportunity to participate in the competitive market, ~~and until all Stranded Costs pertaining to that class of customers have been recovered,~~ each Affected Utility shall make available to all consumers in that class in its service area, as defined on the date indicated in R14-2-1602, Standard Offer bundled generation, transmission, ancillary, distribution, and other necessary services at regulated rates that provide for recovery of all reasonable costs.

(Clarifies meaning of regulated rates since all services are regulated to one extent or another.)

1. An Affected Utility may request that the Commission determine that competition has been substantially implemented to allow discontinuation of Standard Offer service and shall provide sufficient documentation to support its request.

2. 2.—The Commission may, on its own motion, investigate whether competition has been substantially implemented and whether Standard Offer service may be discontinued.

[This concept of a "Standard Offer," which is left over from the original 1996 rules, does not seem to be consistent with following subsection and with subsection F.]

B. After January 1, 2001 Standard Offer service shall be provided by uUtility dDistribution eCompanies. (UDC is a defined term.)

E Standard Offer Tariffs

June 23, 1998 Draft

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July 6, 1998

1. By the date indicated in R14-2-1602, each Affected Utility may file proposed tariffs to provide Standard Offer Bundled Service and such rates shall not become effective until approved by the Commission. If no such tariffs are filed, rates and services in existence as of the date in R14-2-1602 shall constitute the Standard Offer.
2. Affected Utilities may file proposed revisions to such rates. It is the expectation of the Commission that the rates for Standard Offer service will not increase, relative to existing rates, as a result of allowing competition. Any rate increase proposed by an Affected Utility for Standard Offer service must be fully justified through a rate case proceeding.

5. ~~3.~~ Such rates shall recover ~~meet~~ the costs of providing the service.

(See comment to R14-2-1606(A).)

4. Consumers receiving Standard Offer service are eligible for potential future rate reductions authorized by the Commission, such as reductions authorized in Decision No. 59601.

GD. By the date indicated in R14-2-1602, each Affected Utility shall file Unbundled Service tariffs to provide the services listed below to all eligible purchasers on a nondiscriminatory basis:

1. Distribution Service;
2. ~~Metering and m~~Meter ~~r~~Reading ~~s~~Services;
3. Billing and ~~e~~Collection ~~s~~Services;
4. Open access transmission service and ancillary services (as approved by the Federal Energy Regulatory Commission, if applicable); in accordance with Federal Energy Regulatory Commission Order 888 (III FERC Stats. & Regs. = 31,036, 1996) incorporated herein by reference
- ~~5. Ancillary services in accordance with Federal Energy Regulatory Commission Order 888 (III FERC Stats. & Regs. = 31,036, 1996) incorporated herein by reference;~~
- ~~7. Information services such as provision of customer information to other Electric Service Providers;~~
- 8.5. Other ancillary services necessary for safe and reliable system operation.

[These changes conform the use of terms in this Subsection with their definition in R14-2-1601, consolidate various other provisions, and remove a confusing use of a FERC-defined term ("ancillary") in the last paragraph of Subsection C.]

D To manage its risks, an Affected Utility may include in its tariffs deposit requirements and advance payment requirements for Unbundled Services.

F. F.— After January 1, 2001, all long-term (over one year) power purchased by a Utility Distribution Company to serve standard offer customers shall be acquired through competitive bid. Any resulting long-term contract shall be filed with and approved by the Commission contain provisions allowing the UDC to ratchet down its power purchases. If the cost of such a ratchet provision is unreasonable, the affected UDC may file for an exemption from this rule. All purchased power costs shall be recovered through a purchased power adjustment mechanism approved by the Commission.

[APS understands the intent of this provision but is somewhat leary of how it would work in actual practice simply because there is no precedent anywhere in the country for this type of provision. APS has modified the provision to make it flexible and practical. Moreover, the Commission must concurrently authorize UDCs to implement a Purchased Power Adjustment mechanism to reflect the cost of acquiring power for the "Standard Offer."]

F.G. Customer Data

1. Upon authorization by the customer, an Electric Service Provider shall release in a timely and useful manner that customer's demand and energy data for the most recent 12 month period to a customer-specified Electric Service Provider.
2. The Electric Service Provider requesting such customer data shall provide an accurate account number for the customer.
3. The form of data shall be mutually agreed upon by the parties and such data shall not be unreasonably withheld.

G.H. Rates for Unbundled Services

1. The Commission shall review and approve rates for services listed in R14-2-1606(C) and requirements listed in R14-2-1606(D), where it has jurisdiction, before such services can be offered.
2. Such rates shall reflect the costs of providing the services.
3. Such rates may be downwardly flexible if approved by the Commission.

H.I. Electric Service Providers offering services under this R14-2-1606 shall provide adequate supporting documentation for their proposed rates. Where rates are approved by another jurisdiction, such as the Federal Energy Regulatory Commission, those rates shall be provided to this Commission.

I Within 90 days of the adoption of this Article, the Commission Staff shall commence a series of workshops to explore issues in the provision of Unbundled Service and Standard Offer service.

1. Parties to be invited to participate in the workshops shall include utilities, consumers, organizations promoting energy efficiency, and other Electric Service Providers.
2. Among the issues to be reviewed in the workshops are: metering requirements; metering protocols; designation of appropriate test years; the nature of adjustments to test year data; de-averaging of rates; service characteristics such as voltage levels; revenue uncertainty; line extension policies; and the need for performance bonds.
3. A report shall be submitted to the Commission by the Staff on the activities and recommendations of the participants in the workshops not later than 60 days prior to the date indicated in R14-2-1602. The Commission shall consider any recommendations regarding Unbundled Service and Standard Offer service tariffs.

R14-2-1607. Recovery of Stranded Cost of Affected Utilities.

- A. The Affected Utilities shall take every ~~feasible~~ **reasonable**, cost-effective measure to mitigate or offset Stranded Cost by means such as expanding wholesale or retail markets, or offering a wider scope of services for profit, among others.
- B. The Commission shall allow a **reasonable opportunity** for recovery of unmitigated Stranded Cost by Affected Utilities.
- ~~C. A working group to develop recommendations for the analysis and recovery of Stranded Cost shall be established.~~
 - ~~1. The working group shall commence activities within 15 days of the date of adoption of this Article.~~
 - ~~2. Members of the working group shall include representatives of Staff, the Residential Utility Consumer Office, consumers, utilities, and other Electric Service Providers. In addition, the Executive and Legislative Branches shall be invited to send representatives to be members of the working group.~~
 - ~~3. The working group shall be coordinated by the Director of the Utilities Division of the Commission or by his or her designee.~~
- ~~D. In developing its recommendations, the working group shall consider at least the following factors:~~
 - ~~1. The impact of Stranded Cost recovery on the effectiveness of competition;~~
 - ~~2. The impact of Stranded Cost recovery on customers of the Affected Utility who do not participate in the competitive market;~~
 - ~~3. The impact, if any, on the Affected Utility's ability to meet debt obligations;~~
 - ~~4. The impact of Stranded Cost recovery on prices paid by consumers who participate in the competitive market;~~
 - ~~5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;~~
 - ~~6. The degree to which some assets have values in excess of their book values;~~

- ~~7. Appropriate treatment of negative Stranded Cost;~~
- ~~8. The time period over which such Stranded Cost charges may be recovered. The Commission shall limit the application of such charges to a specified time period;~~
- ~~9. The ease of determining the amount of Stranded Cost;~~
- ~~10. The applicability of Stranded Cost to interruptible customers;~~
- ~~11. The amount of electricity generated by renewable generating resources owned by the Affected Utility.~~

~~E. The working group shall submit to the Commission a report on the activities and recommendations of the working group no later than 90 days prior to the date indicated in R14-2-1602.~~

~~F. The Commission shall consider the recommendations and decide what actions, if any, to take based on the recommendations.~~

G.C. The Affected Utilities shall file estimates of unmitigated Stranded Cost. Such estimates shall be fully supported by analyses and by records of market transactions undertaken by willing buyers and willing sellers.

H.D An Affected Utility shall request Commission approval, **on or before August 24, 1998**, of distribution charges or other means of recovering unmitigated Stranded Cost from customers who reduce or terminate service from the Affected Utility as a direct result of competition governed by this Article, or who obtain lower rates from the Affected Utility as a direct result of the competition governed by this Article.

I.E. The Commission shall, after hearing and consideration of analyses and recommendations presented by the Affected Utilities, Staff, and intervenors, determine for each Affected Utility the magnitude of Stranded Cost, and appropriate Stranded Cost recovery mechanisms and charges. In making its determination of mechanisms and charges, the Commission shall consider at least the following factors:

1. The impact of Stranded Cost recovery on the effectiveness of competition;
2. The impact of Stranded Cost recovery on customers of the Affected Utility who do not participate in the competitive market;
3. The impact, if any, on the Affected Utility's ability to meet debt obligations;
4. The impact of Stranded Cost recovery on prices paid by consumers who participate in the competitive market;
5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;
6. The degree to which some assets have values in excess of their book values;
7. Appropriate treatment of negative Stranded Cost;

8. The-time period over which such Stranded Cost charges may be recovered. The Commission shall limit the application of such charges to a specified time period;
9. The ease of determining the amount of Stranded Cost;
10. The applicability of Stranded Cost to interruptible customers;
11. The amount of electricity generated by renewable generating resources owned by the Affected Utility.

J.F. ~~A Competitive Transition Charge may be assessed only Stranded Cost may only be recovered~~ from customer purchases made in the competitive market using the provisions of this Article. Any reduction in electricity purchases from an Affected Utility resulting from self-generation, demand side management, or other demand reduction attributable to any cause other than the retail access provisions of this Article shall not be used to calculate or recover any Stranded Cost from a consumer.

K.G. The Commission may order an Affected Utility to file estimates of Stranded Cost and mechanisms to recover or, if negative, to refund Stranded Cost.

L.H. The Commission may order regular revisions to estimates of the magnitude of Stranded Cost.

R14-2-1608. System Benefits Charges.

A. ~~A.~~—By the date indicated in R14-2-1602, each Affected Utility shall file for Commission review non-bypassable rates or related mechanisms to recover the applicable pro-rata costs of System Benefits from all consumers located in the Affected Utility's service area who participate in the competitive market. ~~In addition, the Affected Utility may file for a change in the System Benefits charge at any time. Affected Utilities shall file for review of the Systems Benefits Charge at least every three years.~~ The amount collected annually through the System Benefits charge shall be sufficient to fund the Affected Utilities' ~~present~~ Commission- approved low income, demand side management, environmental, renewables, customer education, and nuclear power plant decommissioning programs in effect from time to time. Affected Utilities or UDCs shall file for review of the Systems Benefits Charge at least every three years. At such time, and only at such time, the Commission shall determine whether to eliminate, modify, expand, or add to such programs.

[APS's proposed changes to this Subsection accomplish several objectives. First, customer education is explicitly added to the list of eligible programs. Second, it is made clear that changes or additions to the social programs eligible for SBC recovery will only be done at the same time a change in the SBC is being considered. Finally, the sentences are rearranged into a more logical order.]

- B. Each Affected Utility shall provide adequate supporting documentation for its proposed rates for System Benefits.
- C. An Affected Utility shall recover the costs of System Benefits only upon hearing and approval by the Commission of the recovery charge and mechanism. The Commission may combine its review of System Benefits charges with its review of filings pursuant to R14-2-1606.
- D. Methods of calculating System Benefits charges shall be included in the workshops described in R14-2-1606 (I).

R14-2-1609. Solar Portfolio Standard.

- A. A.—Starting on January 1, 1999, any Electric Service Provider selling electricity under the provisions of this Article must derive at least .1% ~~1/2~~ of 1% of the total retail energy sold competitively from new solar resources, whether that solar energy is purchased or generated by the seller. Such requirement will increase by .1% per year after 2004. Solar resources include photovoltaic resources and solar thermal resources that generate electricity. New solar resources are those installed on or after January 1, 1997.

[The 1999 requirement has been and continues to be impossible to meet. APS alone would have to install 4MW (assuming access to the 2.5X credits) in new solar equipment. That amount of new capacity simply cannot be manufactured, delivered and installed by 1999. Thus, the SPS will be nothing more than a 30¢/Kwh tax for at least the first year. An additional amount of at least 21 MW will be required in 2001. The Company suggests starting with a more realistic target, .1%, and ramping it up to 0.25% in 2003, 0.75% in 2005 and 1% in 2007.]

B. Solar portfolio standard after December 31, 2007~~4~~:

1. Starting on January 1, 2007~~2~~, any Electric Service Provider selling electricity under the provisions of this Article must derive at least 1% of the total retail energy sold competitively from new solar resources, whether that solar energy is purchased or generated by the seller. Solar resources include photovoltaic resources and solar thermal resources that generate electricity. New solar resources are those installed on or after January 1, 1997.
2. **The Solar Portfolio Standard requirement shall be in effect for 10 years, from January 1, 1999 through December 31, 2008.** The Commission may ~~change~~ **increase** the solar portfolio percentage applicable after December 31, ~~2001~~ **2005**, taking into account, among other factors, the costs of producing solar electricity and the costs of fossil fuel for conventional power plants. **Prior to any future possible increase in the solar portfolio standard percentage, the Commission shall establish a kWh cost impact cap to ensure that costs must decline in order for solar installation rates to increase.**

~~Any Electric Service Provider certificated under the provisions of this Article shall be able to credit 2 times the electric energy it generated, or caused to be generated under contract, before January 1, 1999 using photovoltaics or solar thermal resources installed on or after January 1, 1997 in Arizona to the electric energy requirements of R14-2-1609(A) or R14-2-1609(B). Electric Service Providers shall be eligible for a number of extra credit multipliers that may be used to meet the Solar Portfolio Standard requirements:~~

1. **Early Installation Extra Credit Multiplier:** For new solar electric systems installed and operating prior to December 31, 2003, electric service providers would qualify for multiple extra credits for kWh produced for five years following operational start-up of the solar electric system. The five-year extra credit would vary depending upon the year in which the system started up, as follows:

<u>YEAR</u>	<u>EXTRA CREDIT MULTIPLIER</u>
1997	.5
1998	.5
1999	.5
2000	.4
2001	.3
2002	.2
2003	.1

The Early Installation Extra Credit Multiplier would end in 2003.

(The credits should be extended to at least 2005 to incentivise the use of new technologies.)

2. **Solar Economic Development Extra Credit Multipliers:** There are two equal parts to this multiplier, an in-state installation credit and an in-state content multiplier.
 - a. **In-State Power Plant Installation Extra Credit Multiplier:** Solar electric power plants installed in Arizona shall receive a .5 extra credit multiplier.
 - b. **In-State Manufacturing and Installation Content Extra Credit Multiplier:** Solar electric power plants shall receive up to a .5 extra credit multiplier related to the manufacturing and installation content that comes from Arizona. The percentage of Arizona content of the total installed plant cost shall be multiplied by .5 to determine the appropriate extra credit multiplier. So, for instance, if a solar installation included 80% Arizona content, the resulting extra credit multiplier would be .4 (which is .8 X .5).
3. **Distributed Solar Electric Generator and Solar Incentive Program Extra Credit Multiplier:** Solar electric generators that meet any of the following conditions shall receive a .5 extra credit multiplier: Any solar electric generator that meets more than one of the eligibility conditions will be limited to only one .5 extra credit multiplier from this

subsection. Appropriate meters will be attached to each solar electric generator and read at least once annually to verify solar performance.

- a. Solar electric generators installed at or on the customer premises in Arizona. Eligible customer premises locations will include both grid-connected and remote, non-grid-connected locations. In order for Electric Service Providers to claim an extra credit multiplier, the Electric Service Provider must have contributed at least 10% of the total installed cost or have financed at least 80% of the total installed cost.
- b. Solar electric generators located in Arizona that are included in any Electric Service Provider's green pricing program.
- c. Solar electric generators located in Arizona that are included in any Electric Service Provider's net metering or net billing program.
- d. Solar electric generators located in Arizona that are included in any Electric Service Provider's solar leasing program.

~~4. Any solar electric generator that meets more than one of the eligibility conditions will be limited to only one .5 extra credit multiplier from this subsection. Appropriate meters will be attached to each solar electric generator and read at least once annually to verify solar performance.~~

~~5.4. All green pricing, n Net metering, and net billing, and solar leasing programs must have been reviewed and approved by the Commission Staff in order for the Electric Service Provider to accrue extra credit multipliers from this subsection.~~

(Green pricing and leasing programs should not require ACC approval. The market should set the price for these programs, the SPS creates the demand.)

~~6.5. All multipliers are additive, allowing a maximum combined extra credit multiplier of 2.0 in years 1997-2003, for equipment installed and manufactured in Arizona and either installed at customer premises or participating in approved solar incentive programs. So, if an ESP qualifies for a 2.0 extra credit multiplier and it produces 1 solar kWh, the ESP would get credit for 3 solar kWh (1 produced plus 2 extra credit).~~

D. Electric Service Providers selling electricity under the provisions of this Article shall provide reports on sales and solar power as required in this Article, clearly demonstrating the output of solar resources, the installation date of solar resources, and the transmission of energy from those solar resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the accuracy of these data.

~~E. If an Electric Service Provider selling electricity under the provisions of this Article fails to meet the requirement in R14-2-1609(A) or R14-2-1609(B) in any year, the Commission may **shall** impose a penalty requirement on that Electric Service Provider **that the Electric Service Provider establish a Solar Electric Fund** equal up to 30 cents per kWh for deficiencies in the provision of solar electricity energy. **This Solar Electric Fund will be utilized to purchase solar electric generators or solar electricity in the following calendar year for the use by public entities in Arizona such as schools, cities, counties, or state agencies.** Title to any equipment purchased by the Solar Electric Fund will be transferred to the public entity. In addition, if the provision of solar energy is consistently deficient, the Commission may void an Electric Service Provider's contracts negotiated under this Article.~~

(APS recommends that this subsection be replaced with APS" proposal to establish a 30 cent wires charge for each kWh required for the SPS which can be offset by 30 cents for each solar kWh actually provided. The UDC will collect the charge and the dollars would be used for solar projects approved by the Commission. Any revenues generated from the solar installations would be used to offset system benefits charges required to be collected for low income and other social programs. A surcharge on distribution service would likely be easier to collect than a tax on ESPs and would allow the Commission greater flexibility concerning use of the proceeds than would a restriction limiting their use to projects for public entities. It is possible that the demand for solar equipment by public agencies may be less than anticipated by Staff even if that equipment is wholly or partially subsidized because the public entity would still be responsible for the on-going maintenance of the equipment and any necessary backup facilities.

- F. Photovoltaic or solar thermal **electric** resources that are located on the consumer's premises shall count toward the solar portfolio standard applicable to the current Electric Service Provider serving that consumer.
- G. ~~The solar portfolio standard described in this section is in addition to renewable resource goals for Affected Utilities established in Decision No. 58643.~~

[Delete this Subsection. The goals set in Decision No. 58643 are irrelevant to today's circumstances and put APS at a great competitive disadvantage compared to other ESPs not subject to Decision No. 58643.]

- H. Any Electric Service Provider or independent solar electric generator that produces or purchases any solar kWh in excess of its annual portfolio requirements may save or bank those excess solar kWh for use or sale in future years. Any eligible solar kWh produced subject to this rule may be sold or traded to any Electric Service Provider that is subject to this Rule. Appropriate documentation, subject to Commission review, shall be given to the purchasing entity and shall be referenced in the reports of the Electric Service Provider that is using the purchased kWh to meet its portfolio requirements

Solar Portfolio Standard requirements shall be calculated on an annual basis, based upon competitive electricity sold during the calendar year.

~~J.~~ J. An Electric Service Provider shall be entitled to receive a partial credit against the Solar Portfolio requirement if the ESP owns or makes a significant investment in any solar electric manufacturing plant that is located in Arizona. The credit will be equal to the amount of the nameplate capacity of the solar electric generators produced in Arizona in a calendar year times ~~2,190~~ 1900 hours (approximating a ~~25~~ 22% capacity factor). The credit against the portfolio requirement shall be limited to the following percentages of the total portfolio requirement:

(A 25% capacity factor for fixed plate PV's is too generous.)

1999	Maximum of 50 % of the portfolio requirement
2000	Maximum of 50 % of the portfolio requirement
2001	Maximum of 25 % of the portfolio requirement
2002	Maximum of 25 % of the portfolio requirement
2003 and on	Maximum of 20 % of the portfolio requirement

No extra credit multipliers will be allowed for this credit. In order to avoid double-counting of the same equipment, solar electric generators that are sold to other Electric Service Providers to meet their Arizona solar portfolio requirements will not be allowable for credits under this section for the manufacturer/ESP to meet its portfolio requirements.

~~K.~~ K. Any solar electric generators used for the production of solar electricity to meet this portfolio requirement must have been certified to have met the appropriate industry safety, durability, reliability, and performance standards. The Commission Staff develop additional standards, as needed.

(The word appropriate will need to be defined. Depending on the type of certification required this could take between 90 days and 2 years.)

~~R14-2-1610. Spot Markets and Independent System Operation Transmission and Distribution Access.~~

~~A.~~ The Commission shall conduct an inquiry into spot market development and independent system operation for the transmission system.

A. ~~A.~~ The Affected Utilities shall provide, in accordance with regulatory guidelines, non-discriminatory open access to transmission and distribution facilities to serve all customers. ~~No preference or priority shall be given to any distribution customer based on whether the customer is purchasing power under the Affected Utility's standard offer or in the competitive market. Rights to use the transmission transfer capability shall be allocated and assigned to the retail customer load on a pro-rata basis.~~

[FERC will decide transmission priorities. Draft rule's language would increase costs for "Standard Offer" customers.]

~~B. The Commission may support development of a spot market or independent system operator(s) for the transmission system.~~

B. The Commission supports the development of an Independent System Operator (ISO) or, absent an ISO, an Independent Scheduling Administrator.

~~C. The Commission may work with other entities to help establish spot markets and independent system operators.~~

C. The Commission believes that an Independent Scheduling Administrator (ISA) is necessary in order to provide non-discriminatory retail access and to facilitate a robust and efficient electricity market. Therefore, the Affected Utilities ISA, with the support of the Affected Utilities, shall file with FERC for approval of an ISA having the following characteristics:

[ISA must make FERC application - not individual utilities.]

1. The ISA shall calculate the Available Transmission Capacity for Arizona transmission facilities that belong to the Affected Utilities or other ISA participants, and shall develop and operate an overarching statewide OASIS.
2. The ISA shall implement and oversee the non-discriminatory application of protocols to ensure statewide consistency for transmission access. These protocols shall include, but are not limited to, protocols for determining transmission system transfer capabilities, committed uses of the transmission system, and available transfer capabilities.
3. The ISA shall provide dispute resolution processes that enable market participants to expeditiously resolve claims of discriminatory treatment in the reservation, scheduling, use and curtailment of transmission services.
4. All requests (wholesale, Standard Offer retail, and competitive retail) for reservation and scheduling of the use of Arizona transmission facilities that belong to the Affected Utilities or other ISA participants shall be made to, or through, the ISA using a single, standardized procedure.

D. The Affected Utilities shall file a proposed ISA implementation plan with the Commission by September 1, 1998. The implementation plan shall address ISA governance, incorporation, financing and staffing; the acquisition of physical facilities and staff by the

ISA; the schedule for the phased development of ISA functionality; contingency plans to ensure that critical functionality is in place by January 1, 1999; and any other significant issues related to the timely and successful implementation of the ISA.

E. Each of the Affected Utilities shall make good faith efforts to develop a regional, multi-state Independent System Operator (ISO), to which the ISA should transfer its functions as the ISO becomes able to carry out those functions.

~~F.~~ F.—It is the intent of the Commission that the prudently-incurred costs of the Affected Utilities in the establishment and operation of the ISA, and subsequently the ISO, should be recovered from customers using the transmission system, including the Affected Utilities' wholesale customers, Standard Offer retail customers, and competitive retail customers, through FERC-regulated prices which shall be set on a non-discriminatory basis. Proposed rates for the recovery of such costs shall be filed with the FERC ~~and the Commission.~~ In the event that FERC does not permit recovery of ISA costs, the Commission shall authorize Affected Utilities to recover such costs through a distribution surcharge.

[FERC decides what is or is not discriminatory. Thus, inclusion of the clause at the end of the first sentence implies an unnecessary jurisdictional conflict. The same is true of the second sentence. The Commission already receives all FERC filings per FERC rules and thus the deleted language in second sentence is unnecessary. Finally, FERC is not necessarily sold on ISAs and thus a back-up cost recovery mechanism is necessary.]

G. The Commission supports the use of "Scheduling Coordinators" to provide aggregation of customers' schedules to the ISA and the respective Control Area Operators simultaneously until the implementation of a regional ISO, at which time the schedules will be submitted to the ISO. The primary duties of Scheduling Coordinators are to:

1. Forecast their customers' load requirements
2. Submit balanced schedules (i.e., schedules for which total generation is equal to total load of the Scheduling Coordinator's customers plus appropriate transmission losses) and NERC/WSCC tags
3. Arrange for the acquisition of the necessary transmission and ancillary services
4. Respond to contingencies and curtailments as directed by the Control Area Operators, ISA or ISO
5. Actively participate in the schedule checkout process and the settlement processes of the Control Area Operators, ISA or ISO.

~~H.~~ The Commission may support the development of a regional spot market to ensure economic and operational efficiency for all customers.

~~The Commission shall determine which generation units are must-run units for distribution reliability and mitigation of market power, and will regulate the price of power from these units. The terms of the must-run contracts will be finalized prior to the divestiture of the must-run units. "Must run" generating units used for purposes of system reliability on an Affected Utility's system shall be identified by the respective Affected Utility. Until such time as either an ISO is formed or an Affected Utility's generation assets are divested pursuant to R14-2-1606, all costs of the Affected Utilities "must run" units must be recovered through distribution rates.~~

[APS has rewritten this Subsection to recognize that "must run" units eventually will be recovered through a FERC contract between the ISO and the owner of the must run units. Moreover, the provision must necessarily be limited to "Affected Utilities" because even though Kyrene and Agua Fria are "must run" units, neither the Commission nor FERC exercises regulatory authority over SRP.]

R14-2-1611. In-State Reciprocity.

- A. The service territories of Arizona electric utilities which are not Affected Utilities shall not be open to competition under the provisions of this Article, nor shall Arizona electric utilities which are not Affected Utilities be able to compete for sales in the service territories of the Affected Utilities.
- B. An Arizona electric utility, subject to the jurisdiction of the Commission, which is not an Affected Utility may voluntarily participate under the provisions of this Article if it makes its service territory available for competing sellers, if it agrees to all of the requirements of this Article, and if it obtains an appropriate Certificate of Convenience and Necessity.
- C. An Arizona electric utility, not subject to the jurisdiction of the Commission, may submit a statement to the Commission that it voluntarily opens its service territory for competing sellers in a manner similar to the provisions of this Article. Such statement shall be accompanied by the electric utility's nondiscriminatory Standard Offer Tariff, electric supply tariffs, Unbundled Services rates, Stranded Cost charges, System Benefits charges, Distribution Services charges and any other applicable tariffs and policies for services the electric utility offers, for which these rules otherwise require compliance by Affected Utilities or Electric Service Providers. Such filings shall serve as authorization for such electric utility to utilize the Commission's Rules of Practice and Procedure and other applicable rules concerning any complaint that an Affected Utility or Electric Service Provider is violating any provision of this Article or is otherwise discriminating against the filing electric utility or failing to provide just and reasonable rates in tariffs filed under this Article.
- D. If an electric utility is an Arizona political subdivision or municipal corporation, then the existing service territory of such electric utility shall be deemed open to competition if the political

subdivision or municipality has entered into an intergovernmental agreement with the Commission that establishes nondiscriminatory terms and conditions for Distribution Services and other Unbundled Services, provides a procedure for complaints arising therefrom, and provides for reciprocity with Affected Utilities. The Commission shall conduct a hearing to consider any such intergovernmental agreement.

R14-2-1612. Rates.

- A. Market determined rates for competitively provided services as defined in R14-2-1605 shall be deemed to be just and reasonable.
- B. Each Electric Service Provider selling services under this Article shall have on file with the Commission tariffs describing such services and maximum rates for those services, but the services may not be provided until the Commission has approved the tariffs.
- C. ~~C.~~—Prior to the date indicated in R14-2-1604 ~~(D)~~, (E) competitively negotiated contracts governed by this Article customized to individual customers which comply with approved tariffs do not require further Commission approval. However, all such contracts whose term is 1 year or more and for service of 1 MW or more must be filed with the Director of the Utilities Division as soon as practicable. If a contract does not comply with the provisions of this Article the Affected Utilities or ESP's approved tariffs, it shall not become effective without a Commission order.

[This change makes the third sentence of this Subsection consistent with the first. Moreover, it removes the considerable uncertainty that would otherwise attend the execution of any agreement. This previous "non-issue" has become a problem because under Article 16, as amended by these Staff proposals, there are now infinitely more "provisions of this Article" with which a contract may arguably not comply.]

- JD. Contracts entered into on or after the date indicated in R14-2-1604 ~~(D)~~ (E) which comply with approved tariffs need not be filed with the Director of the Utilities Division. If a contract does not comply with the provisions of this Article the Affected Utilities or the ESP's approved tariffs it shall not become effective without a Commission order.

(See comment on Subsection C, above.)

- KE. An Electric Service Provider holding a Certificate pursuant to this Article may price its competitive services, as defined in R14-2-1605, at or below the maximum rates specified in its filed tariff, provided that the price is not less than the marginal cost of providing the service.
- LF. Requests for changes in maximum rates or changes in terms and conditions of previously approved tariffs may be filed. Such changes become effective only upon Commission approval.

..14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements.

- A. Except as indicated elsewhere in this Article, R14-2-201 through R14-2-212, inclusive are adopted in this Article by reference. However, where the term "utility" is used in R14-2-201 through R14-2-212, the term "utility" shall pertain to Electric Service Providers providing the services described in each paragraph of R14-2-201 through R14-2-212. ~~R14-2-212 (G)(2) shall pertain only to Affected Utilities. R14-2-212 (G)(4) shall apply only to Affected Utilities.~~ R14-2-212 (H) shall pertain only to ~~Electric Service Providers who provide distribution service~~ **Utility Distribution Companies.**
- B. The following shall not apply to this Article:
1. R14-2-202 in its entirety,
 2. R14-2-212 (F)(1),
 3. R14-2-213.
- C. No consumer shall be deemed to have changed ~~suppliers~~ **providers** of any service authorized in this Article (including changes from supply by the Affected Utility to another ~~supplier~~ **provider** without written authorization by the consumer for service from the new ~~supplier~~ **provider**.) If a consumer is switched (**or slammed**) to a different ("new") ~~supplier~~ **provider** without such valid written authorization, the new ~~supplier~~ **provider** shall cause service by the previous ~~supplier~~ **provider** to be resumed and the new ~~supplier~~ **provider** shall bear all costs associated with switching the consumer back to the previous ~~supplier~~ **provider**. **A written authorization that is obtained by deceit or deceptive practices shall not be deemed a valid written authorization. Providers shall submit quarterly reports to the Commission itemizing the direct complaints filed by customers who have had their electric service providers changed without their authorization. Violations of the Commission's rules concerning slamming may result in fines and penalties, including but not limited to suspension or revocation of the provider's certificate.**
- ~~C.~~ D.—Each Electric Service Provider providing service governed by this Article shall be responsible for meeting applicable reliability standards and shall work cooperatively with other companies with whom it has interconnections, directly or indirectly, to ensure safe, reliable electric service. **Electric Service Providers are required to make reasonable efforts to notify customers of scheduled outages, and provide notification to the Commission for interruptions affecting a large portion of their system.**

[If, as it appears, this entire Subsection is intended to apply to ESPs, the Company is confused because ESPs, by definition, do not have distribution and transmission systems to interconnect and are simply not in a position to notify either their customers or the Commission of outages on these systems. If this Subsection refers to generation outages, customer notification is unnecessary except in the unusual case of a unit-specific sale. If, instead, this is in reference to meter-related outages, the UDC is more in need of notice than the end-user.]

- E. Each Electric Service Provider shall provide at least 30 days notice to all of its affected consumers if it is no longer obtaining generation, transmission, distribution, or ancillary services necessitating that the consumer obtain service from another supplier of generation, transmission, distribution, or ancillary services.
- F. All Electric Service Providers rendering service under this Article shall submit accident reports as required in R14-2-101.
- G. An Electric Service Provider providing firm electric service governed by this Article shall make reasonable efforts to reestablish service within the shortest possible time when service interruptions occur and shall work cooperatively with other companies to ensure timely restoration of service where facilities are not under the control of the Electric Service Provider.
- H. Each Electric Service Provider shall ensure that bills rendered on its behalf include ~~the~~**its address and toll free telephone numbers for billing, service, and safety inquiries. The bill must include the address and toll free telephone numbers for the Phoenix and Tucson Consumer Service Sections of the Arizona Corporation Commission Utilities Division.**~~and the telephone number of the Consumer Services Section of the Arizona Corporation Commission Utilities Division.~~ Each Electric Service Provider shall ensure that billing and collection services rendered on its behalf comply with R14-2-1613 (A) and ~~R14-2-1613(B)~~.
- I. **Additional Provisions for Metering and Meter Reading Services**
1. An Electric Service Provider who provides metering or meter reading services pertaining to a particular consumer shall provide access to meter readings to other Electric Service Providers serving that same consumer.
 2. A consumer or an Electric Service Provider relying on metering information provided by another Electric Service Provider may request a meter test according to the tariff on file and approved by the Commission. However, if the meter is found to be in error by more than 3%, no meter testing fee will be charged.
 3. Protocols for metering shall be developed subsequent to the workshops described in R14-2-1606(I).
6. ~~4.~~ **Each competitive customer shall be assigned a Universal Node Identifier for each service delivery point by the Affected Utility whose distribution system serves the customer or by the UDC.**

[This change recognizes that the Affected Utility may not be in the distribution business after 2001 if the reorganization contemplated under R14-2-1616 results in distribution being provided by an affiliate of the present Affected Utility.]

~~5.~~ All competitive metered and billing data shall be translated into a consistent, statewide Electronic Data Interchange (EDI) format based on standards approved by the Utility Industry Group (UIG) that can be used by the Affected Utility, the UDC and the Electric Service Provider.

(See comment on 4 above.)

~~5. 6.~~ Electronic Data Interchange (EDI) format shall be used for all data exchange transactions ~~from the meter to the billing company~~ MRSP to the ESP, LDC and Schedule Coordinator. This data will ~~may~~ be transferred via the Internet using a secure sockets layer.

[MRSP provider will be the entity transmitting the data not the meter. Use of the word "format" describes the structure of the data transmitted. The change also allows for flexibility in setting specific standards without being locked into "EDI" transmission protocols using proprietary networks..]

7. Minimum metering requirements for competitive customers ~~over 20 kW or more~~, or 100,000 kWh annually, should consist of hourly consumption measurement meters or meter systems. (APS believes that 20kW or more is appropriate rather than insisting that customer be over 20kW.)

8. Competitive customers with hourly loads ~~at least~~ of 20kW (or 100,000 kWh annually) or less, will be permitted to use load profiling to satisfy the requirements for hourly consumption data. (See comment in 7 above.)

9. Meter ownership will be limited to the Affected Utility, the Electric Service Provider or their representative, or the customer, who will obtain the meter from the Affected Utility or the Electric Service Provider.

10. Control of the metering equipment will be limited to the Affected Utility or the UDC and the Electric Service Provider or their representative. (See comment above on Paragraph 4.)

11. Distribution primary voltage CT's and PT's 1) in excess of 600 volts to 25kV, may be owned by the Affected Utility and the Electric Service Provider or their representative, and in excess of 25 kV may be owned by the Affected Utilities or the UDC. See comment on definition no. 10.)

~~12.~~ Transmission primary voltage CT's and PT's may be owned by the Affected Utility only. (See comment on 11 above.)

~~13.~~ North American Electric Reliability Council recognized holidays will be used for metering purposes.

Delete this paragraph. APS does not understand the purpose of this language. NERC holidays are irrelevant to metering. If the intent is to require uniform holidays for purposes of determining whether some special rate or surcharge might apply, e.g., off-peak rates or premium charges for holiday service calls, APS would suggest that legal holidays in Arizona would be a more relevant standard than NERC holidays.

14. The operating procedures approved by the Metering Committee will be used by the UDCs and the MSPs for performing work on primary metered customers.
15. The rules approved by the Metering Committee will be used by the MRSP for validating, editing, and estimating metering data.
16. The performance metering specifications and standards approved by the Metering Committee will be used by all entities performing metering.

J. Working Group on System Reliability and Safety

1. ~~If it has not already done so,~~ The Commission shall establish, by separate order, a working group to monitor and review system reliability and safety.
 - a. The working group may establish technical advisory panels to assist it.
 - ~~e. The working group shall commence activities within 15 days of the date of adoption of this Article.~~
 - e.b. Members of the working group shall include representatives of Staff, consumers, the Residential Utility Consumer Office, utilities, other Electric Service Providers and organizations promoting energy efficiency. In addition, the Executive and Legislative Branches shall be invited to send representatives to be members of the working group.
 - ~~d.c.~~ The working group shall be coordinated by the Director of the Utilities Division of the Commission or by his or her designee.
2. All Electric Service Providers governed by this Article shall cooperate and participate in any investigation conducted by the working group, including provision of data reasonably related to system reliability or safety.
3. The working group shall report to the Commission on system reliability and safety regularly, and shall make recommendations to the Commission regarding improvements to reliability or safety.

K. Electric Service Providers shall comply with applicable reliability standards and practices established by the Western Systems Coordinating Council and the North American Electric Reliability Council or successor organizations.

Electric Service Providers shall provide notification and informational materials to consumers about competition and consumer choices, such as a standardized description of services, as ordered by the Commission.

M. Unbundled Billing Elements.

All customer bills for competitive electric services and ~~Standard Offer services~~ after January 1, 1999 will list, at a minimum, the following billing cost elements:

1. Electricity Costs
 - a. generation
 - b. CTC
 - c. fuel or purchased power adjustor, if applicable

2. Delivery costs
 - a. distribution services
 - b. transmission services
 - c. ancillary services

(Although FERC-regulated, ancillary services are billed and generally treated separately from transmission services.)

3. Other Costs
 - a. metering service
 - b. meter reading service
 - c. billing and collection
 - d. System Benefits charge

[APS may not be able to provide billings in this detail for unbundled services by the beginning of 1999. It will require that its CIS program be modified to allow such billings. In addition, APS does not believe "Standard Offer" rates can be unbundled in the manner indicated and still produce billings equal to existing rates.]

R14-2-1614. Reporting Requirements.

- A. Reports covering the following items shall be submitted to the Director of the Utilities Division by Affected Utilities (prior to 2001) and all Electric Service Providers granted a Certificate of Convenience and Necessity pursuant to this Article. These reports shall include the following information pertaining to competitive service offerings, Unbundled Services, and Standard Offer services in Arizona:

[APS has added the limitation on the responsibility of "Affected Utilities" for these reports in recognition that they will divest their generation to either an affiliated or non-affiliated ESP by that date per R14-2-1616.]

1. Type of services offered;

2. kW and kWh sales to consumers, disaggregated by customer class (for example residential, commercial, industrial);
 3. Solar energy sales (kWh) and sources for grid connected solar resources; kW capacity for off-grid solar resources;
 4. Revenues from sales by customer class (for example residential, commercial, industrial);
 5. Number of retail customers disaggregated as follows: aggregators, residential, commercial under 100 kW, commercial 100 kW to 2999 kW, commercial 3000 kW or more, industrial less than 3000 kW, industrial 3000 kW or more, agricultural (if not included in commercial), and other;
 6. Retail kWh sales and revenues disaggregated by term of the contract (less than 1 year, 1 to 4 years, longer than 4 years), and by type of service (for example, firm, interruptible, other);
 7. Amount of and revenues from each service provided under R14-2-1605, and, if applicable, R14-2-1606;
 8. Value of all Arizona specific assets and accumulated depreciation;
 9. Tabulation of Arizona electric generation plants owned by the Electric Service Provider broken down by generation technology, fuel type, and generation capacity;
 10. **Calculate the fuel mix percentages and emissions for the resources used to meet that portion of the load-serving entity's electrical load associated with the kilowatt hours delivered to retail customers derived from the following fuel sources characteristics i.e., biomass, coal, hydro, municipal solid waste, natural gas, nuclear, oil, solar, wind, and other renewable resources; and separate emissions characteristics i.e., carbon dioxide, nitrogen oxides, and sulfur dioxide. This information is to be disclosed to customers as required by the Commission and upon public and customer request.**
- ~~10.11.~~ Other data requested by staff or the Commission;
- ~~11.12.~~ In addition, prior to the date indicated in R14-2-1604 ~~(D)~~,~~(E)~~ Affected Utilities shall provide data demonstrating compliance with the requirements of R14-2-1604.

B. Reporting Schedule

1. For the period through December 31, 2003, semi-annual reports shall be due on April 15 (covering the previous period of July through December) and October 15 (covering the

previous period of January through June). The first such report shall cover the period January 1 through June 30, 1999.

2. For the period after December 31, 2003, annual reports shall be due on April 15 31 (covering the previous period of January through December). The first such report shall cover the period January 1 through December 31, 2004.

- C. The information listed above may be provided on a confidential basis. However, Staff or the Commission may issue reports with aggregate statistics based on confidential information that do not disclose data pertaining to a particular seller or purchases by a particular buyer.
- D. Any Electric Service Provider governed by this Article which fails to file the above data in a timely manner may be subject to a penalty imposed by the Commission or may have its Certificate rescinded by the Commission.
- E. Any Electric Service Provider holding a Certificate pursuant to this Article shall report to the Director of the Utilities Division the discontinuation of any competitive tariff as soon as practicable after the decision to discontinue offering service is made.
- F. In addition to the above reporting requirements, Electric Service Providers governed by this Article shall participate in Commission workshops or other forums whose purpose is to evaluate competition or assess market issues.
- G. Reports filed under the provisions of this section shall be submitted in written format and in electronic format. Electric Service Providers shall coordinate with the Commission Staff on formats.

R14-2-1615. Administrative Requirements.

- A. Any Electric Service Provider certificated under this Article may ~~propose~~ **file proposed** additional **tariffs for electric** services at any time ~~by filing a proposed tariff with the Commission describing which~~ **include a description of** the service, maximum rates, terms and conditions. The proposed new ~~electrical~~ service may not be provided until the Commission has approved the tariff.
- B. Contracts filed pursuant to this Article shall not be open to public inspection or made public except on order of the Commission, or by the Commission or a Commissioner in the course of a hearing or proceeding.
- C. The Commission may consider variations or exemptions from the terms or requirements of any of the rules in this Article upon the application of an affected party. The application must set forth the reasons why the public interest will be served by the variation or exemption from the Commission rules and regulations. Any variation or exemption granted shall require an order of the Commission. Where a conflict exists between these rules and an approved tariff or order of the Commission, the provisions of the approved tariff or order of the Commission shall apply.

The Commission may develop procedures for resolving disputes regarding implementation of retail electric competition.

R14-2-1616. Legal Issues.

- ~~A. A working group to identify, analyze and provide recommendations to the Commission on legal issues relevant to this Article shall be established.~~
- ~~1. The working group shall commence activities within 15 days of the date of adoption of this Article.~~
 - ~~2. Members of the working group shall include representatives of Staff, the Residential Utility Consumer Office, consumers, utilities, and other Electric Service Providers. In addition, the Executive and Legislative Branches and the Attorney General shall be invited to send representatives to be members of the working group.~~
 - ~~3. The working group shall be coordinated by the Director of the Legal Division of the Commission or by his or her designee.~~
- ~~B. The working group shall submit to the Commission a report on the activities and recommendations of the working group no later than 90 days prior to the date indicated in R14-2-1602.~~
- ~~C. The Commission shall consider the recommendations and decide what actions, if any, to take based on the recommendations.~~

R14-2-1616. Separation of Monopoly and Competitive Generation Assets

- ~~A. An Affected Utility shall either divest itself of all generation assets and services prior to January 1, 2001. Such divestiture shall either be to an unaffiliated party or transfer competitive assets to a separate corporate affiliate or affiliates, at a value determined by the Commission to be fair and reasonable, subject to hearing, by January 1, 2001. In the latter instance, such transfer shall be at the assets' fair market value at the time of transfer calculated in a manner consistent with the method used by the Commission to quantify stranded costs. The Commission may extend such period for good cause. If an Affected Utility intends to seek such an extension prior to 1999, it shall include in its compliance plan under R14-2-1617(C) a description of those rules and procedures it will use to functionally separate its competitive generation business, from its UDC business and an estimate of the additional time sought to effectuate divestiture.~~
- ~~*[This change recognizes that in either instance, there is a divestiture of assets used to provide competitive electric generation services. If the divestiture is to an affiliate, it adopts Generally Accepted Accounting Principles in requiring that such divestiture be at the transferor's fair market value at the time of transfer. It also provides a procedure for seeking extensions of these dates and for putting interim protective provisions into place pending final divestiture. For example, APS does not believe that divestiture to an affiliate is feasible until at least 2002 and intends to seek such additional time from the Commission.]*~~

12. ~~B.~~ B. After January 1, 2001, ~~An Affected Utility~~ a UDC shall not provide competitive generation services as defined herein except as authorized by the Commission. However, this rule does not preclude an ~~Affected Utility's~~ UDC's affiliate from providing competitive electric generation services.

[This change clarifies the scope of non-permitted competitive services and further allows the Commission to make exceptions on a case-by-case basis. Use of the defined term UDC reflects the fact that the "Affected Utility", as it existed prior to 2001, may no longer exist except as a UDC. It also attempts to harmonize this rule with R14-2-1606(C).]

R14-2-1617 Electric Affiliate Transaction Rules.

A. ~~A.~~ Separation: ~~An Affected Utility~~ A UDC and its competitive electric affiliates shall operate as separate corporate entities. Books and records shall be kept separate, in accordance with the applicable Uniform System of Accounts (USOA), in the case of the UDC and Generally Accepted Accounting Procedures (GAAP) in the case of competitive generation electric affiliates. The books and records of any utility competitive generation electric affiliate shall be open for examination by the Commission and its staff consistent with the provisions set forth in A.A.C. R14-2-1614.

[This change makes it clear that it is the transaction of business between the regulated UDC and its competitive affiliates that triggers automatic Commission access to the affiliate's books and records. As such, this change is consistent with the scope of the Commission's jurisdiction under R14-2-804. APS has also substituted the term "UDC" for "Affected Utility" throughout because the former term has the requisite meaning both before and after the divestiture called for under R14-2-1616 while the latter does not.]

1. ~~1.~~ An ~~Affected Utility~~ A UDC shall not share office space, equipment, services, and systems with its competitive electric affiliates, nor shall an ~~Affected Utility~~ a UDC and its competitive electric affiliates access any computer or information systems of one another, unless expressly provided for in these rules or except as required to maintain system operation, reliability and safety.

[These changes allow the UDC to share office space, etc., with other non-electric affiliates. Why should the APS UDC be prohibited from sharing office space with, say, SunCor? The Company has generally qualified the term "affiliate" by the words "competitive electric" throughout this rule except where the context is clear that a prohibition or restriction would logically apply to even non-electric affiliates of the UDC.]

2. An ~~Affected utility~~ A UDC, its parent holding company, or a separate affiliate created solely for the purpose of corporate support functions, may share with its

shall be transferred at the price and under the terms and conditions specified in the UDC's tariff. If the good or service is not subject to any tariffed price, such transfer shall be at the market price for such goods and services or, if no market price can be readily established, at a price at least equal to the UDC's incremental cost of producing such good or service.

b. Goods and services produced, purchased or developed for sale on the open market by the ~~Affected Utility~~ UDC will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise permitted by these rules or applicable law.

~~c. Good and services not produced, purchased or developed for sale by an Affected Utility to its affiliates shall be priced at fully loaded cost, plus 5% of direct labor costs. Transfers from an affiliate to an Affected Utility for such goods and services shall be priced at the lower of fully loaded cost or fair market value. A UDC shall not purchase goods and services from an affiliate at a price above market price or, if a market price can not be established for a particular good or service, at a price greater than the affiliate's incremental cost of producing such good or service.~~

[In addition to allowing the Commission to make special case-by-case exceptions to these pricing rules, APS has rewritten subparagraphs a and c to make transfer pricing consistent with existing tariffs, consistent with market principles, non-discriminatory and symmetrical.]

C.B. Compliance Plans: No later than December 31, 1998, each Affected Utility shall file a compliance plan with the Commission demonstrating to the procedures and mechanisms implemented to ensure that activity prohibited by these rules will not take place. The compliance plan shall be submitted to the Utility Division and shall be in effect until a determination is made regarding its adequacy under these rules. The compliance plan shall thereafter be submitted annually to reflect any material changes.

(Typo)

~~1. New Affiliate Compliance Plan: For each newly created affiliate subject to these rules, an Affected Utility shall file a compliance plan to be submitted to the Utility Division for review. The compliance plan shall demonstrate how the utility will implement these rules with respect to the new affiliate.~~

[APS would delete this provision as being unnecessarily redundant with both the initial filing of a compliance plan and the subsequent auditing requirements.]

2. ~~No later than December 31, 1999, and every year thereafter, an Affected Utility shall have audits prepared by independent auditors which verify that the utility is in compliance with the rules set forth herein. Audits shall be prepared at shareholder expense. Each UDC will establish an internal audit function which which to ensure that the UDC and its affiliates are in compliance with this Rule. The Commission may review any transaction governed by this Rule to determine violations thereof and may order independent audits of such compliance.~~

[APS has rewritten this paragraph to emphasize internal audit controls and Commission oversight rather than expensive mandatory outside audits. Moreover, there should be no a priori assignment to shareholders of these costs, especially in those cases where no violations of the Rule are reasonably suspected or found.]

DC. ~~Disclosure: An Affected Utility~~ A UDC shall provide customer information to its competitive electric affiliates and non-affiliates on a non-discriminatory basis, provided prior affirmative customer written consent is obtained. Any non-customer specific non-public information shall be made contemporaneously available by an ~~Affected Utility~~ UDC to its competitive electric affiliates and all other service providers on the same terms and conditions.

1. ~~Any list provided by an Affected Utility to its customers which includes or identifies the utility's affiliates must include or identify non-affiliated entities as well. If a customer request is made, the Affected Utility shall provide the customer with a list of all providers of electricity or utility related goods and services operating in its service territory, including its affiliates. Any list of ESPs provided by an UDC to its customers which includes or identifies the UDC's competitive electric affiliates must include or identify non-affiliated entities included on the list of those ESPs authorized by the Commission to provide service within the UDC's certificated area. The Commission shall maintain an undated list of such ESPs and make that list available to UDCs at no cost. If a customer request is made, the UDC shall either provide the customer with the Commission list of all ESPs in its service territory, including its competitive electric affiliates, or refer the customer to the Commission to obtain such list.~~

[APS has modified the lead-in to this Subsection both to use the terms "UDC" and "competitive electric affiliate" and to recognize that it will likely be impossible to offer 100% identical terms and conditions to all non-affiliates. Second, paragraph 1 is rewritten to limit the list to authorized ESPs and to impose a responsibility on the Commission to maintain an accurate list of such ESPs. Some of the more exotic ESPs, such as MRSPs, MSPs and BCSPs may well be completely unknown to APS, and in

any event the Commission is in a better position to maintain an accurate list than is APS or any other UDC.]

- ~~2. 2. — An Affected Utility may provide non-public supplier information and data which it has received from unaffiliated suppliers to its affiliates or nonaffiliated entities only if the utility receives prior authorization from the supplier.~~

[APS would delete this paragraph because suppliers of goods and services to UDCs can negotiate whatever protections of non-public proprietary information they believe are necessary without the need of a new regulation on the point.]

- ~~3. 3. — Except as otherwise provided in these rules, an Affected Utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers. Except as otherwise provided in these rules, a UDC shall not directly or indirectly promote, market or sell the services of an affiliated ESP.~~

[As presently drafted by Staff, the prohibition is so broad that it would prevent a UDC from even giving out the phone number of an affiliated ESP or answering simple inquiries about how a customer could contact such ESP.]

4. ~~An Affected Utility~~ A UDC shall maintain contemporaneous records documenting all tariffed and non-tariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. These records shall be maintained for a period of three years, or longer if required by this Commission or another governmental agency.

- ~~4. 5. — An Affected Utility shall maintain a record of all contracts and related bids for the provision of work, product or services to and from a utility to its affiliates for a period of three years, or longer if required by this Commission or another governmental agency.~~

[APS would delete this paragraph. It is redundant with paragraph 4.]

6. To the extent that reporting rules imposed by FERC require more detailed information or more expeditious reporting, nothing in these rules shall be construed to modify such FERC requirements.

ED. Nondiscrimination: ~~an Affected Utility~~ a UDC shall not represent that, as a result of the affiliation with the utility UDC, its affiliates or customers of affiliates will receive any

treatment different from that provided to other, non-affiliated entities or their customers. ~~An Affected Utility~~ A UDC shall not provide its affiliates, or customers of its affiliates, any preference over non-affiliated suppliers or their customers in the provision of services provided by the utility UDC.

1. ~~1.~~ — Discounts: Except when made generally available by an ~~Affected Utility~~ a UDC through an open, competitive bidding process, if the Affected Utility offers a discount or waives all or any part of any charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility UDC shall contemporaneously make such discount or waiver available to all similarly situated market participants. ~~All competitors serving the same market as the Affected Utility's affiliates shall be offered the same discount as the discount received by the affiliate.~~

[The last sentence of the paragraph was deleted as being redundant. The remainder of the proposed language clarifies that an equitable offer of price, terms, and conditions need only be made when there has been an unreasonable preference granted the affiliate. Differences attributable to non-affiliation such as the size of the purchase, the credit worthiness of the buyer, etc., are not unreasonable.]

2. — If a tariff provision allows for discretion in its application, an ~~Affected Utility~~ a UDC shall apply that provision equally ~~among its affiliates and all other market participants and their respective customers.~~ Consistent with the provisions above. If there is no discretion in the tariff provision, the Affected Utility UDC shall strictly enforce that tariff provision . in accordance with the rules and orders of the Commission.

[It is simply not possible to assure that all requests will be treated 100% identically. The proposed language clarifies the intent that there be no undue preference to an affiliate. However, the UDC must be given the flexibility to allocate its limited resources in a commercially reasonable fashion without triggering knee-jerk claims of discrimination.]

3. ~~3.~~ — Requests ~~from affiliates and non-affiliated entities and their customers for similar services provided by the Affected Utility shall be processed equally and within the same time.~~ Requests from affiliates and non-affiliated entities and their customers for similar regulated services provided by the UDC shall be processed without giving undue preference or priority to the UDC's affiliates or their customers. This provision does not prevent the UDC from prioritizing or processing requests for service on a "first come - first served" basis, or from giving priority to requests affecting

public health and safety or affecting the reliability of the electric system, or any other commercially reasonable manner within resource constraints.

[See comment to paragraph 2, above.]

4. ~~An Affected Utility~~ A UDC shall not condition or otherwise tie the provision of any service provided, nor the availability of discounts of rates or other charges or fees, rebates or waivers of terms and conditions of any services, to the taking of any goods or services from its affiliates.
5. ~~An Affected Utility~~ A UDC shall not assign customers to which it currently provides services to any affiliate by any means, unless that means is equally available to all competitors.
6. ~~In the course of business development and customer relations, except as otherwise provided for in these rules, an Affected Utility shall refrain from:~~
 - ~~a. providing leads to its affiliates;~~
 - ~~b. soliciting business on behalf of affiliates;~~
 - ~~c. acquiring information on behalf of, or provide to, its affiliates; and~~
 - ~~d. sharing market analysis reports or any non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates.~~

[APS would delete this paragraph. There is no reason to establish an a priori ban on these activities so long as the UDC observes the requirements of the rule on non-discrimination, etc.]

7. ~~Any discounted rate, rebate, or other waiver of a charge or fee associated with services provided by an Affected Utility shall be recorded and maintained, for each billing period, with the following information:~~
 - ~~a. name of the entity being provided services;~~
 - ~~b. the affiliate's role in the transaction;~~
 - ~~c. the duration of the discount or waiver;~~
 - ~~d. the maximum rate;~~
 - ~~e. the rate or fee actually charged during the billing period; and~~

~~f. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.~~

(This information is already covered by R14-2-1617(D)(4).)

R14-2-1618 Information Disclosure Label

[APS would delete the entirety of proposed Rule 1618. Although the Company supports disclosure of generation-related prices, and reasonably available resource, fuel and emission information in a manner that is uniform among all competitors, such disclosure must be clear, concise, informative, cost-effective and feasible. Proposed Rule R14-2-1618 requires substantial additional review and revision to meet these objectives. APS requests an opportunity to meet and confer with Commission Staff to explain in detail the practical difficulties with the proposed language and ways in which the language could be improved. In the interim, the Company suggests the following language be considered as a placeholder for this important concept until an improved version of this rule can be developed:

"Each Load-serving Entity shall disclose price, fuel mix, emission and resource portfolio information regarding its generation service in a uniform and consistent manner in accordance with a label format, disclosure policy and reporting requirements approved by the Commission."

- A. Each Load-serving Entity shall prepare information on a label for each price offering in a form that is consistent for all Load-serving Entities, with this rule. Such label shall be a condition of certification for ESPs.
- B. Price to be charged and price variability. The label shall present the price of generation service as an average unit price in cents per kilowatt-hour as measured at the customer meter over the course of an annualized period, regardless of actual price structure. This unit price shall be the price for generation services only, and shall not include charges associated with delivery, other Commission regulated services, or other non-generation products or services except as provided below. The label shall contain the following information on average price and price variability.
1. Average price information on the label. Average prices shall be shown for four levels of use. The average price for each usage level shall be the total charge for generation service for the specified usage level, divided by the kilowatt-hours for the particular usage level. Average prices shall be rounded to the nearest one tenth of a cent per kilowatt-hour.
 - a. Residential. Average prices for residential consumers shall be shown for usage levels of 250, 500, 1000 and 2000 kilowatt-hours per month.

2. **Determining the Resource Portfolio.** The resource portfolio of a Load-serving Entity shall consist of the portfolio of generating resources used to meet that portion of the Load-serving Entity's Electrical Load associated with the kilowatt-hours delivered to retail customers, kilowatt hours of associated electrical losses, and kilowatt-hours of use by the Load-serving Entity on its own system.
3. **Label reporting period.** The label reporting period shall be stated on the label. The label reporting period shall be the most recent one-year period prior to the reporting month for which resource portfolio information has been updated with the following exceptions:
 - a. If a Load-serving Entity has operated in the state for less than twelve months, but more than three months, the Load-serving Entity shall report the information that is available for the portion of the year the Load-serving Entity has operated.
 - b. If a Load-serving Entity has operated in the state for less than three months, the Load-serving Entity shall report a reasonable estimate of its resource portfolio based on the Load-serving Entity's known generating unit ownership and contracts, and the average regional system mix.
4. **Fuel Source Characteristics** Each Load-serving Entity shall report on the label the fuel mix of its resource portfolio.
5. At least the following fuel sources shall be separately identified on the label and listed in alphabetical order: biomass; coal; hydro; municipal solid waste; natural gas; nuclear; oil; solar; wind; and other Renewable Resources (including fuel cells utilizing renewable fuel sources, landfill gas, and ocean thermal). Fuel mix percentages shall be rounded to the nearest full percentage point.
6. **Energy Storage Facilities.** The fuel mix associated with an energy storage facility shall be the fuel mix of the energy used as input to the storage device. The characteristics disclosed shall include any losses as a result of storage.
7. **Emissions Characteristics.** Each Load-serving Entity shall identify its resource portfolio and shall report on the label the emission characteristics of said resource portfolio.
 - a. For the purpose of emission characteristics disclosure, at least the following pollutants shall be separately identified on the label: carbon dioxide (CO₂), nitrogen oxides (NO_x), and sulfur dioxide (SO₂).
 - b. Emissions for each emission category shall be computed as an annual emission rate in pounds per kilowatt-hour.

- c. Emission characteristics of the resource portfolio shall be calculated using annual emission rates for each generating facility as identified by the Commission in consultation with the ADEQ and the United States Environmental Protection Agency.
- d. Until such annual emission rates are identified by the Commission, the annual emissions rates for a generating unit shall be calculated based on one of the following:
 - 1. Continuous Emissions Monitoring data for the most recent reporting year divided by net electric generation for the same period;
 - 2. Emission factors currently approved or provided by state environmental protection agencies, the United States Environmental Protection Agency, or other appropriate government environmental agency, if Continuous Emissions Monitoring data are not available; or
 - 3. If the generating unit has been in operation less than twelve (12) months: (a) for (NO_x) and (SO₂), permitted emissions levels; and (b) for (CO₂), the carbon content of the fuel.
- e. The following types of generating units shall be assigned emissions characteristics as provided in this section:
 - 1. Energy storage facilities. The emissions associated with an energy storage facility shall be the emissions of the energy used as input to the storage device. The characteristics disclosed shall include any losses as a result of storage.
 - 2. Cogeneration facilities may make a reasonable allocation of emissions between electricity production and other useful output based on measured heat balances. The Load-serving Entity may use offsets associated with facilities that emit CO₂ if preapproved by Staff.

D. Format of Information Disclosure Label. The label shall be presented in a format pre-approved by Staff.

E. Company Disclosure. Each Load-serving Entity shall prepare an annual Company Disclosure report that aggregates the Resource Portfolios of all affiliated Load-serving Entities. The Company Disclosure report shall be provided to each customer of a Load-serving Entity prior to the initiation of service and on an annual basis thereafter.

F. Terms of Service Requirement. Each Load-serving Entity shall prepare a statement entitled "Terms of Service" as described in this rule. The Terms of Service shall be distributed in

accordance with the rule and shall conform to all applicable consumer protection statutes, rules and regulations.

1. The Terms of Service shall present the following information:

- a. Actual pricing structure or rate design according to which the Customer will be billed, including an explanation of price variability and price level adjustments that can cause the price to vary;**
- b. Length and kind of contract;**
- c. Due date of bills and consequences of late payment;**
- d. Conditions under which a credit agency is contacted;**
- e. Deposit requirements and interest on deposits;**
- f. Limits on warranty and damages;**
- g. Any and all charges, fees, and penalties;**
- h. Information on consumer rights pertaining to:**
 - i. estimated bills;**
 - ii. third-party billing;**
 - iii. deferred payments**
 - iv. recission of supplier switch within three days of receipt of confirmation;**
 - v. a toll-free number for service complaints;**
 - vi. low-income rate eligibility;**
 - vii. provisions for default service;**
 - viii. applicable provisions of state utility laws;**
 - ix. method whereby customer will be notified of changes to items in the terms of service.**

G. Distribution of disclosure label and terms of service. The label and the Terms of Service shall be distributed in accordance with this section as follows:

- 1. Prior to initiation of service. Following a Customer's initial choice of an ESP or Standard Offer, the Load-serving Entity shall provide the Customer with the disclosure label prepared pursuant to this rule and with the statements of the Terms of Service prepared pursuant to this rule.**
- 2. Notice. Load-serving Entities shall provide the label to retail Customers on a semi-annual basis, at a minimum.**
- 3. Upon request. The label and the Terms of Service shall be available to any person upon request.**

H. **Information disclosure in advertising.** ESPs and UDCs providing Standard Offer services shall provide the disclosure label prepared pursuant to this rule in a prominent position in all written marketing materials describing generation service, including newspaper, magazine, and other written advertisements, and in all electronically-published advertising including Internet materials. For direct mail materials and similar marketing materials, the label shall be provided with the materials. Where Electricity Service is marketed in non-print media, the marketing materials shall indicate that the Customer may obtain the disclosure label upon request. Prior to the initiation of service, a Customer must have received the disclosure label.

I. **Enforcement.** Dissemination of inaccurate information, or failure to comply with the Commission's regulations on information disclosure, may result in certification suspension, revocation, or penalties.

R14-2-210. BILLING AND COLLECTION

A. Frequency and estimated bills

~~1. Each utility shall bill monthly for services rendered. Meter readings shall be scheduled for periods of not less than 25 days or more than 35 days. The utility~~ **UDC or ESP shall render a bill for each billing period to every customer in accordance with its applicable rate schedule and offer billing options for the services rendered. Meter readings shall be scheduled for periods of not less than 25 days or more than 35 days. If the utility** **UDC or ESP changes a meter reading route or schedule resulting in a significant alteration of billing cycles, notice shall be given to the affected customers.**

[APS has replaced the undefined term "utility" with the defined terms "UDC" and "ESP." Since the term ESP also encompasses MRSPs, MSPs, and BCSPs, and UDCs also perform these tasks for "Standard Offer" customers, this substitution of terms picks up all relevant entities,

~~2. If the utility is unable to read the meter on the scheduled meter read date, the utility will estimate the consumption for the billing period giving consideration to the following factors where applicable:~~

- ~~a. The customer's usage during the same month of the previous year.~~
- ~~b. The amount of usage during the preceding month.~~

2. Each billing statement rendered by the **utility** **UDC or ESP** shall be computed on the actual usage during the billing period. If the **utility** **UDC or ESP** is unable to obtain an actual reading, the **utility** **UDC or ESP** may estimate the consumption for the billing period giving consideration the following factors where applicable:

- a. The customer's usage during the same month of the previous year.

b. The amount of usage during the preceding month.

- ~~3. After the second consecutive month of estimating the customer's bill for reasons other than severe weather, the utility will attempt to secure an accurate reading of the meter.~~
- 3. Each billing statement rendered by the utility shall be computed on the actual usage during the billing period. Estimated bills will be issued only under the following conditions unless otherwise approved by the Commission:**
- a. When extreme weather conditions, emergencies, labor agreements or work stoppages prevent actual meter readings.**
 - b. Failure of a customer who reads his own meter to deliver his meter reading to the UDC or ESP utility in accordance with the requirements of the utility UDC billing cycle.**
 - c. When the utility UDC or ESP is unable to obtain access to the customer's premises for the purpose of reading the meter, or in situations where the customer makes it unnecessarily difficult to gain access to the meter, i.e., locked gates blocked meters, vicious or dangerous animals, etc. If the utility UDC or ESP is unable to obtain an actual reading for these reasons, it shall undertake reasonable alternatives to obtain a customer reading of the meter.**
 - d. When the UDC or ESP MRSP is able to determine a customer-equipment failure.
[See comment on paragraph 1, above. The second reference to "utility" in subparagraph b is limited to the UDC because it is necessary for ESP billing cycles to conform to those of the UDC.]**
- ~~4. Failure on the part of the customer to comply with a reasonable request by the utility for access to its meter may lead to the discontinuance of service. Estimated bills will be issued only under the following conditions:~~
- ~~a. Failure of a customer who read his own meter to deliver his meter reading card to the utility in accordance with the requirements of the utility billing cycle.~~
 - ~~b. Severe weather conditions which prevent the utility from reading the meter.~~
 - ~~c. Circumstances that make it dangerous or impossible to read the meter, i.e., locked gates, blocked meters, vicious or dangerous animals, etc.~~
- 4. After the third consecutive month of estimating the customer's bill, due to meter access, the MRSPUDC or ESP will attempt to secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance of service.**
- 5. A UDC or ESP utility may not render a bill based on estimated usage if:**

~~a. a.~~—The estimating procedures employed by the UDC or ESP utility have not been approved by the Commission.

~~*(See comment on 1 above.)*~~

b. The billing would be the customer's final bill for service.

~~6. Each bill based on estimated usage will indicate that it is an estimated bill.~~

6. When a UDC or ESP utility renders an estimated bill in accordance with these rules, it shall:

- a. Maintain accurate records of the reasons therefore and efforts made to secure an actual reading.
- b. Clearly and conspicuously indicate that it is an estimated bill and note the reason for its estimation.
- c. Use customer supplied meter readings, whenever possible, to determine usage.

~~*(See comment on 1 above.)*~~

Combining meters minimum bill information.

1. Each meter at a customer's premise will be considered separately for billing purposes, and the readings of two or more meters will not be combined unless otherwise provided for in the readings of two or more meters will not be combined unless otherwise provided for the utility's tariffs.
2. Each bill for service will contain the following minimum information:
 - ~~a. Date and meter reading at the start of billing period or number of days in the billing period~~
 - ~~b. Date and meter reading at the end of the billing period.~~
 - ~~c. Billed usage and demand~~
 - d. Rate schedule number
 - ~~e. Utility telephone number~~
 - ~~f. Customer's name~~
 - ~~g. Service account number~~
 - h. Amount due and due date
 - ~~i. Past due amount~~
 - ~~j. Adjustment factor, where applicable~~
 - ~~k. Taxes~~
 - ~~l. The Arizona Corporation Commission and address, thereof~~

- a. The beginning and ending meter readings of the billing period, the dates thereof, and the number of days in the billing period.
- b. The date when the bill will be considered due and the date when it will be delinquent, if not the same
- c. Billing usage, demand, basic monthly service charge and total amount due
- d. Rate schedule number.
- e. Customer's name and service account number
- f. Any previous balance
- g. Fuel adjustment cost, where applicable
- h. License, occupation, gross receipts, franchise and sales taxes.
- i. The address and telephone numbers of the Electric Service Provider, and/or the UDC designating where the customer may initiate an inquiry or complaint concerning the bill or services rendered.
- j. The Arizona Corporation Commission address and toll free telephone numbers.

C. Billing terms.

- ~~1. All bills for utility services are due and payable no later than ten days from the date the bill is rendered. Any payment not received within this time frame shall be considered past due.~~
- 1. All bills for utility UDC and ESP services are due and payable no later than fifteen days from the date of the bill. Any payment not received within this time frame shall be considered delinquent and could incur a late payment charge.
- 2. For purposes of this rule, the date a bill is rendered may be evidenced by:
 - a. The postmark date
 - b. The mailing date
 - c. The billing date shown on the bill (however, the billing date shall not differ from the postmark or mailing date by more than 2 days).
- ~~3. All past due bills for utility services are due and payable within 15 days. Any payment not received within this time frame shall be considered delinquent.~~

3. All delinquent bills shall be subject to the provisions of the utility's UDC or ESP's termination procedures.

~~4. All delinquent bills for which payment has not been received within five days shall be subject to the provisions of the utility's termination procedures.~~

4. All payments shall be made at or mailed to the office of the utility UDC or the ESP or to ~~the utility's~~ their authorized payment agency. The date on which the UDC or the ESP utility actually receives the customer's remittance is considered the payment date.

~~5. All payments shall be made at or mailed to the office of the utility or to the utility's duly authorized representative.~~

D. Applicable tariff, prepayment, failure to receive, commencement date, taxes

1. Each customer shall be billed under the applicable tariff indicated in the customer's application for service.

2. Each utility UDC or ESP shall make provisions for advance payment of utility services.

3. Failure to receive bills or notices which have been properly placed in the United States mail shall not prevent such bills from becoming delinquent nor relieve the customer of his obligations therein.

~~4. Charges for utility service commence when the service is actually installed and connection made, whether used or not.~~

4. Charges for electric service commence when the service is actually installed and connection made, whether used or not. A minimum one-month billing period is established on the date the service is installed (excluding landlord/utility UDC/ESP special agreements).

5. Charges for services disconnected after one month shall be prorated back to the customer of record.

E. Meter error corrections

~~1. If any meter after testing is found to be more than 3% in error, either fast or slow, proper correction between 3% and the amount of the error shall be made of previous readings and adjusted bills shall be rendered according to the following terms:~~

~~a. For the period of three months immediately preceding the removal of such meter from service for test or from the time the meter was in service since last tested, but no exceeding three months since the meter shall have been shown to be in error by such test.~~

~~b. From the date the error occurred, if the date of the cause can be definitely fixed.~~

1. **The utility UDC or ESP may test a meter upon customer request or request of the non-metering party and each utility shall be authorized to charge the customer requesting party for such meter test according to the tariff on file approved by the Commission. However, if the meter is found to be in error by more than 3%, no meter testing fee may be charged to the customer. If the meter is found to be more than 3% in error, either fast or slow, the correction of previous bills will be made under the following terms allowing the utility to recover or refund the difference:**

a. **If the date of the meter error can be definitely fixed, the utility UDC or ESP shall adjust the customer's billings back to that date. If the customer has been underbilled, the Company will allow the customer to repay this difference over an equal length of time that the underbillings occurred. The customer may be allowed to pay the backbill without late payment penalties, unless there is evidence of meter tampering or energy diversion.**

b. **If it is determined that the customer has been overbilled and there is no evidence of meter tampering or energy diversion, the ~~Company~~ UDC or ESP will make prompt refunds in the difference between the original billing and the corrected billing within the next billing cycle. The customer may be allowed to pay the backbill without late payment penalties, unless there is evidence of meter tampering or energy diversion.**

(The non-metering service provider (either the ESP or the UDC) may need to request a meter test.)

2. **No adjustment shall be made by the utility except to the customer last serviced by the meter which that was tested.**

3. **Any underbilling resulting from a stopped or slow meter, utility meter reading error, or a billing calculation shall be limited to three months for residential customers and six months to non-residential customers. No such limitation will apply to overbillings.**

[APS has not taken the time to make all the changes of the term "utility" to "UDC or ESP." Suffice it to say that the Company believes such change to be universally appropriate.]

F. Insufficient funds (NSF) or Returned Checks

~~1. A utility shall be allowed to recover a fee, as approved by the Commission in a tariff proceeding, for each instance where a customer tenders payment for utility service with an insufficient funds check.~~

1. **A utility shall be allowed to recover a fee, as approved by the Commission in a tariff proceeding, for each instance where a customer tenders payment for utility service with a check which is returned by the customer's bank.**
- ~~2. When the utility is notified by the customer's bank that there are insufficient funds to cover the check tendered for utility service, the utility may require the customer to make payment in cash, by money order, certified check, or other means which guarantee the customer's payment to the utility.~~
2. **When the utility is notified by the customer's bank that the check tendered for utility service will not clear, the utility may require the customer to make payment in cash, by money order, certified check, or other means to guarantee the customer's payment to the utility.**
- ~~3. A customer who tenders an insufficient check shall in no way be relieved of the obligation to render payment to the utility under the original terms of the bill nor defer the utility's provision for termination of service for nonpayment of bills.~~
3. **A customer who tenders such a check shall in no way be relieved of the obligation to render payment to the utility under the original terms of the bill nor defer the utility's provision of termination of service for nonpayment of bills.**

Levelized billing plan

1. Each utility may, at its option, offer its residential customers a levelized billing plan.
2. Each utility offering a levelized billing plan shall develop upon customer request, an estimate of the customer's levelized billing for a 12-month period based upon:
 - a. Customer's actual consumption history, which may be adjusted for abnormal conditions such as weather variations.
 - b. For new customers, the utility will estimate consumption based on the customer's anticipated load requirements.
 - c. The utility's tariff schedules approved by the Commission applicable to that customer's class of service.
3. The utility shall provide the customer a concise explanation of how the levelized billing estimate was developed, the impact of levelized billing on a customer's monthly utility bill, and the utility's right to adjust the customer's billing for any variation between the utility's estimated billing and actual billing.
4. For those customers being billed under a levelized billing plan, the utility shall show, at a minimum, the following information on ~~the customer's~~ **their** monthly bill:
 - a. Actual consumption

- b. **Dollar** amount due for actual consumption
- c. Levelized billing amount due
- d. Accumulated variation in actual versus levelized billing amount.

5. The utility may adjust the customer's levelized billing in the event the utility's estimate of the customer's usage and/or cost should vary significantly from the customer's actual usage and/or cost; such review to adjust the amount of the levelized billing may be initiated by the utility or upon customer request.

H. Deferred payment plan

1. Each utility may, prior to termination, offer to qualifying residential customers a deferred payment plan for the customer to retire unpaid bills for utility service.

~~2. Each deferred payment agreement entered into by the utility and the customer due to the customer's inability to pay an outstanding bill in full shall provide that service will not be discontinued if:~~

2. Each deferred payment agreement entered into by the utility and the customer shall provide that service will not be discontinued if:

- a. Customer agrees to pay a reasonable amount of the outstanding bill at the time the parties enter into the **agreement**.
- b. Customer agreed to pay all future bills for utility service in accordance with the billing and collection tariffs of the utility.
- c. Customer agrees to pay a reasonable portion of the remaining outstanding balance in installments over a period not to exceed six months.

3. For the purposes of determining a reasonable installment payment schedule under these rules, the utility and the customer shall give consideration to the following conditions:

- a. Size of the delinquent account
- b. Customer's ability to pay
- c. Customer's payment history
- d. Length of time that the debt has been outstanding
- e. Circumstances which resulted in the debt being outstanding
- f. Any other relevant factors related to the circumstances of the customer

~~4. Any customer who desires to enter into a deferred payment agreement shall establish such agreement prior to the utility's scheduled termination date for nonpayment of bills; customer~~

~~failure to execute a deferred payment agreement prior to the scheduled termination date shall not prevent the utility from discontinuing service for non-payment.~~

4. Any customer who desires to enter into a deferred payment agreement shall establish such agreement prior to the utility's scheduled termination date for nonpayment of bills. The customer's failure to execute such an agreement prior to the termination date will not prevent the utility from disconnecting service for non-payment.
5. Deferred payment agreements may be in writing and signed by the customer and an authorized utility representative.
6. A deferred payment agreement may include a finance charge as approved by the Commission in a tariff proceeding.
7. ~~If a customer has not fulfilled the terms of a deferred payment agreement, the utility shall have the right to disconnect service pursuant to the utility's termination of service rules and, under such circumstances, it shall not be required to offer subsequent negotiation of a deferred payment agreement prior to disconnection.~~
7. If a customer has not fulfilled the terms of a deferred payment agreement, the utility shall have the right to disconnect service pursuant to the utility's termination of service rules. Under such circumstances, it shall not be required to offer subsequent negotiation of a deferred payment agreement prior to disconnection.

I. Change of occupancy

1. ~~Not less than three working days in advance notice must be given in person, in writing, or by telephone at the company's office to discontinue service or to change occupancy.~~
1. To order service discontinued or to change occupancy, the customer must give the utility at least three working days advance notice in person, in writing, or by telephone.
2. ~~The outgoing party shall be responsible for all utility services provided and/or consumed up to the scheduled turnoff date.~~
2. The outgoing customer shall be responsible for all utility services provided and/or consumed up to the scheduled turn-off date.
3. The outgoing customer is responsible for providing access to the meter so that the utility may obtain a final meter reading.

[APS would again urge the Commission to use defined terms such as ESP or UDC rather than the undefined term "utility" whenever possible. In addition, APS fully

supports the recommendations of the Billing and Collections Working Group, which recommendations have been previous forwarded to Staff and which are attached hereto.

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July 22, 1998
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Ray T. Williamson
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ARIZONA CORPORATION COMMISSION
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Phoenix, Arizona 85007

**Re: Staff's Second Draft of Proposed Revisions to Electric
Competition Rules (Docket No. RE-00000C-94-0145)**

Dear Ray:

Arizona Public Service Company ("APS" or "Company") is appreciative of this opportunity to supplement both its July 6th comments ("Original Comments") and Jack Davis' oral presentation at the Arizona Corporation Commission's ("Commission") July 15th Public Meeting. Although the Company has, in large part, heeded your admonition about rearguing old points, APS respectfully asks that you and your Staff again carefully review the Company's Original Comments. APS stands by the need for each of the changes and additions outlined therein. Avoiding ambiguities and internal inconsistencies in Staff's proposed electric competition rules ("Proposed Rules")¹ will never be easier than now, when all of us can presumably agree on what we mean by a specific regulation - not two years down the road in the middle of some heated dispute. Indeed, at our meeting of July 8th, it appeared that Staff had agreed to certain changes (and expressed no opposition to others), which nevertheless did not appear in the second draft of the Proposed Rules. Therefore, if it appears to you that APS is "beating a dead horse" on a particular issue, I apologize in advance, but I do not want Staff to overlook an otherwise useful amendment to the Proposed Rules because the Company was in any way lax in pressing its point of view.

¹ Since the Proposed Rules are, in large part, amendments to Article 16 of the Commission's rules and regulations, these supplemental comments may also refer to the Proposed Rules as "Article 16" or "Article 16 Rules."

APS has organized its supplemental written comments into eight areas. The first seven were highlighted in Mr. Davis' July 15th oral comments. These include:

- 1) Inconsistencies in Proposed Rules 1601, 1605, 1606, 1613, 1616 (and also in portions of Staff's proposed changes to Article 2)² as to the scope of services both permitted and required of Affected Utilities (and later, of UDCs), and between the definitions of the terms "Competitive" and "Non-Competitive" services set out in Proposed Rule 1601 and the subsequent description of these services in the text of the Proposed Rules;
- 2) Affiliate Issues (Proposed Rule 1617);
- 3) The use of the ambiguous terms "utility" and "entity" in the aforementioned proposed changes to Article 2;
- 4) Labeling and reporting requirements [Proposed Rules 1604(B)(5) and 1618];
- 5) Standard Offer requirements (Proposed Rule 1606);
- 6) Solar Portfolio (Proposed Rule 1609); and,
- 7) ISA/ISO (Proposed Rule 1610).

The eighth category is a miscellaneous catchall generally ranging from minor inconsistencies and isolated ambiguities to mere typos. However, APS does have substantive comments on Proposed Rules 1608 and 1613 included in this section.

II. INCONSISTENCIES IN SCOPE OF PERMITTED/REQUIRED SERVICES AND IN TERMS "COMPETITIVE SERVICES" AND "NON-COMPETITIVE SERVICES"

APS believes that the best way to start this discussion is to briefly review what APS understands to be the overall role for Affected Utilities (and eventually, UDCs) envisioned by the Proposed Rules, as well as the distinction between competitive and non-competitive electric services. To the extent Staff takes issue with these fundamental assumptions, it must modify some of the Company's specific suggestions. Nevertheless, the central thrust of APS' position,

²A.A.C. R14-2-201, *et seq.*

i.e., to clearly and consistently define and use critical terms such as "Competitive" and "Non-Competitive," is still valid and should be reflected in Staff's final proposal to the Commission.

Assumption No. 1 - Affected Utilities and UDCs are required to provide, on the basis of regulated monopoly, Standard Offer service (including metering, billing and collection for Standard Offer Service) and unbundled distribution service. See Proposed Rules 1601(24); 1605(B); 1606(A); and 1606(D)(1).

Assumption No. 2 - Affected Utilities and UDCs are required to provide, again on a regulated monopoly basis, transmission and related "ancillary services." See Proposed Rules 1605(B) and 1606(D)(4) and (5).

Assumption No. 3 - In addition to providing metering for Standard Offer customers, Affected Utilities and UDCs also retain a monopoly under the Proposed Rules over certain aspects of metering for all customers served at "Transmission Primary Voltage" ("TPV"), as that term is defined in Proposed Rule 1601(34). Specifically, Proposed Rule 1613(I)(12) restricts ownership of "Current Transformers" [Proposed Rule 1601(8)] and "Potential Transformers" [Proposed Rule 1601(27)], both of which would fall under the definition of "Metering Service" [Proposed Rule 1601(22)], to Affected Utilities (and presumed, UDCs) for these TPV customers. Consequently, it is simply incorrect to assert, without qualification, that "Metering Service" is competitive.

Assumption No. 4 - Affected Utilities and UDCs are required to provide unbundled metering, billing, collection, information, and potentially other services "to all eligible purchasers" in competition with other providers of such services. See Proposed Rules 1605(B) and 1606(D)(2), (3), (6) and (7). As Mr. Davis noted in his oral comments, not only do the Commission's electric competition rules authorize, and indeed mandate a role by UDCs in providing metering and billing services for ESPs, there is no other practical way to provide metering for the 20kW and below, load-profiled customers. Moreover, many smaller ESPs will no doubt depend on the incumbent utility to provide these support services, just as has been universally the case in telecommunications. Prohibiting the UDC from providing metering and billing for competitive services will simply result in higher metering and billing costs to consumers and fewer competitors in the area it counts the most - electric energy,

Assumption No. 5 - Affected Utilities are generally prohibited from providing "Competitive Services." See Proposed Rule 1616(B).

As is readily apparent, Assumptions 4 and 5 are in direct conflict. Moreover, each of these assumptions is at least in partial conflict with one provision of the Proposed Rules or another. For example, Proposed Rule 1605 (B) would appear to authorize competition in the

provision of Standard Offer service (including, but not limited to metering and billing for Standard Offer service) and in all Metering Service [(including those aspects of TPV metering restricted solely to Affected Utilities under Proposed Rule 1613(I)(12)]. To straighten this all out, APS makes the following recommendations:

- 1) Amend Proposed Rule 1601(24) - the definition of "Non-Competitive Services" - to include all of the services described in Assumptions 1-3 above, namely: Standard Offer Service (already in definition); distribution service (already in definition); transmission and FERC-required ancillary services (not presently in definition); and those aspects of Metering Service described in Proposed Rule 1613(I)(12) (not presently in definition).
- 2) Modify the first sentence in Proposed Rule 1605(B) to read: "Any service described in R14-2-1606, except those classified by this Article as Non-Competitive."³
- 3) Modify Proposed Rule 1616(B) by inclusion of the words: " as permitted or required by this Article or" after the word "except."⁴

These three simple amendments would not only conform and harmonize all parts of the Proposed Rules to the five basic assumptions described above, it will also make the requirements of Article 2 consistent with the scope of UDC and ESP activities under Article 16.

III. AFFILIATE TRANSACTIONS

Proposed Rule 1617 suffers from both under-inclusion and over-inclusion. It is under-inclusive because the Proposed Rule fails to impose similar requirements on other ESPs that are affiliated with distribution utilities (e.g., PG&E) even though witnesses for these entities in the recent stranded cost proceeding did not oppose such requirements and even though the harm to

³ Proposed Rule 1605(B) could also list all of the designated non-competitive electric services included in the revised definition of "Non-Competitive Services", but this would be unnecessary if the definition is modified as proposed by APS and the defined term thereafter used in Proposed Rule 1605(B).

⁴ If, on the other hand, it is Staff's recommendation that Affected Utilities (and UDCs) not be permitted to offer metering, billing and collection, etc., for competitive generation ESPs, even if pursuant to a Commission-regulated tariff, then it should delete these services from the scope of Proposed Rule 1606(D) and modify the definition of "Metering Service" [Proposed Rule 1601(22)] so as to exclude those parts of metering encompassed by Proposed Rule 1613(I)(12).

competition (i.e., cross-subsidies from monopoly services to competitive services) is the same whether the monopoly service is in Arizona or another state.⁵ Proposed Rule 1617 is over-inclusive in that it goes beyond the stated objective of preventing the UDC from subsidizing or in any way favoring its competitive electric affiliates.

The under-inclusion problem can be solved by modifying the definition of UDC [Proposed Rule 1601(37)] in the manner suggested in the Company's Original Comments. Specifically, the following sentence should be added: "For purposes of R14-2-1617, UDC also means any affiliate of an Energy Service Provider that would be a UDC if it were otherwise subject to the Commission's jurisdiction as a public service corporation." (Staff could instead attempt to add the more generic term "ESP" to specific provisions of Proposed Rule 1617, but as noted below, this can lead to over-inclusion problems that are avoided by the more simple definitional change noted above.)

The over-inclusion problem is more complicated and requires several discrete changes to Proposed Rule 1617:

- 1) The words "utility affiliate" should be stricken from the second sentence of Proposed Rule 1617(A) and replaced with the words: "ESP affiliate of an Affected Utility or UDC." This is consistent with both Proposed Rule 1614, which is cited in the sentence, and with the stated intent of this regulation. Other (non-electric) affiliates of an Affected Utility or a UDC are covered by A.A.C. R14-2-804(A), and there is no need to create a new and possible conflicting provision for such affiliates.
- 2) Delete "ESP" from Proposed Rule 1617(B). There is no reason why a competitive ESP, whether or not affiliated with a UDC, should be required to share its competitive customer information with anyone except perhaps the Commission. Indeed, the exclusion of the term "ESP" from the last sentence of Proposed Rule 1617(B) is an indication that its inclusion in the previous two sentences was an unintentional oversight.
- 3) Delete Proposed Rule 1617(B)(2). As set forth in the Company's Original Comments, vendors of goods and services to UDCs are more than capable of protecting via contract their information and data from disclosure to third parties if they believe such protection is important. The UDC's

⁵ Some ESPs may even have distribution affiliates in Arizona and yet not be subject to these restrictions because they do not fall within the scope of "Affected Utilities" (e.g., an affiliate of SRP).

market power lies in its provision of distribution and transmission services, not in its purchase of goods and services from others.

- 4) Delete "ESP" from Proposed Rule 1617(C)(1). There is no purpose served by limiting the ability of competitive ESPs from granting selective discounts, even to its UDC affiliate. The Proposed Rule, as currently drafted, would effectively prevent all selective discounting by the UDC's competitive ESP affiliate, which in turn pretty much ends that entity's ability to compete with other ESPs. There is no rational reason for a competitive ESP to subsidize its non-competitive affiliate, thus it must be presumed that any selective discount given was in response to competition from other ESP's for the UDC's business [e.g., the competitive bids required under Proposed Rule 1606(B)]. Even if the ESP affiliate acts irrationally by giving its UDC affiliate an unnecessary discount, this harms only the competitive ESP and helps the UDC's customers. It does not adversely affect competition.
- 5) Delete "ESP" from Proposed Rule 1617(C)(5). The inclusion of competitive ESPs is even more inappropriate here. Why should an ESP be prohibited from engaging in the listed activities with another affiliated ESP? Indeed, the whole point of forming a competitive power marketing affiliate is quite often to market the competitive generation of the competitive generating affiliate or to package such generation with the competitive services (e.g., DSM) provided by yet a third competitive affiliate.

Proposed Rule 1617 also has its own share of ambiguities. APS' Original Comments noted the potential problem with Proposed Rule 1617(C)(3) and proposed including a few examples of what would not be considered an "undue preference or priority." APS strongly believes that these additions would go a long way towards avoiding future disputes over this provision. On the other hand, Proposed Rule 1617(A)(7)(a) reflects only part of the language suggested by the Company in its Original Comments and presumes that every service provided by an Affected Utility or UDC would necessarily be a tariffed utility service. Since this latter presumption is obviously false, the whole provision becomes confusing. APS urges Staff to adopt all of the language proposed by the Company in its Original Comments on this paragraph.

Finally, the Company again urges Staff to reconsider the mandatory annual outside audit requirement of Proposed Rule 1617(D). Although Staff has removed in this second draft the offensive language requiring utility shareholders to absorb this cost, the broader issue is why incur the cost at all if: (i) the Affected Utility or UDC has internal auditing procedures in place

that are acceptable to the Commission; (ii) the Commission as well as the FERC and SEC auditors have full access to all the information required to assure themselves that the UDC is not subsidizing or discriminating in favor of a competitive affiliate; and (iii) there is no evidence that the UDC is not in substantial compliance with this regulation. APS' proposed language in its Original Comments stressed the role of internal audit controls and yet would allow the Commission to order periodic outside audits of compliance on an "as needed" basis.⁶ This would avoid burdening the UDC with unnecessary costs at precisely the time the Commission is looking for ways to decrease rates.

IV. ARTICLE 2 ISSUES

Although both A.A.C. R14-2-201(45) and Proposed Rule 1613(A) attempt to define the term "utility," these definitions are inadequate for three basic reasons:

- 1) A.A.C. R14-2-201(45) is so broad as to encompass every sort of ESP, UDC and non-certificated provider of service and is therefore useless outside the context of a vertically integrated monopoly provider;
- 2) Proposed Rule 1613(A) attempts to get around the first problem by stating that : "the term 'utility' shall pertain to Electric Service Providers providing the services described in each paragraph of R14-2-201 through R14-2-212." Unfortunately, it is not always clear precisely what "service" is being described in a specific paragraph. For example, is a meter deposit a metering service issue or a billing service issue? Is disconnection for non-payment a distribution service issue or a collections issue?
- 3) Even if problem 2 did not exist, a UDC (to which many of the Article 2 provisions obviously are intended to apply) is, by definition, not an ESP and thus falls outside the definition of "utility" provided by Proposed Rule 1613(A).

APS wishes there was an easy fix for this problem. Unfortunately, there is no substitute for going through each paragraph and deciding whether it applies to UDCs, ESPs, or both. This already difficult task will be further complicated by the fact that some service providers to which some of these provisions might readily apply (e.g., billing and collection entities) are no longer ESPs under this draft of the Proposed Rules and thus would not be encompassed by either term.

⁶ Another suggestion might be to require such an outside audit only if the UDC is seeking a rate increase.

Two new problems in Article 2 arise from: (i) the use of the undefined term "entity" in Proposed Rule 209(C) and (F); and (ii) the addition of a new sentence in Proposed Rule 210(B)(1). Both the source and purpose of these changes to Staff's first draft is a mystery to the Company.

APS suggests substituting for the term "entity" the words "Customer or the customer's ESP or UDC" to solve the first problem. This would clearly identify those entities that can obtain meter rereads or meter testing. APS would also note that the title of these subsections should probably be changed to simply say "Meter Rereads" [Proposed Rule 209(C)] and "Requests for Meter Test" [Proposed Rule 209(F)]. This would conform the title with the text of these provisions.

The second issue is far more serious. APS would delete the proposed additional sentence in its entirety. Competitive services are clearly aggregatable under Proposed Rule 1604, and this new language merely confuses the issue both by suggesting that loads less than 40 kW could be aggregated for billing purposes or worse yet, that non-competitive services such as Standard Offer or distribution could be aggregated for billing purposes. This is precisely the opposite of what the Commission determined barely a year ago in Decision No. 60292 (July 2, 1997)⁷ and, if permitted, would cost APS and its other customers tens of millions of dollars a year. If total deletion of the sentence in question is unacceptable to Staff, an alternative would be to add the phrase "of Competitive Services" after the word "aggregation." This would solve at least part of the problem created by this language although the confusion about its applicability to loads smaller than 40 kW would remain until all loads were eligible for competitive services in 2001.

V. LABELING AND REPORTING

At present, APS can offer little more than to reiterate Mr. Davis' suggestion that the labeling and reporting requirements of Proposed Rule 1618 are still burdensome, impractical, and likely to be counterproductive. The Commission should designate a special task force headed by Staff and including Affected Utilities, potential ESPs, and consumer representatives, to come up with labeling and reporting standards for ESPs that meet each of three basic objectives:

- 1) The information should be readily obtainable by the Affected Utility, ESP or UDC. Accurately tracing electrons through ten or fifteen previous transactions to determine their original source and then attributing to those

⁷ That decision resulted from a complaint by Maricopa County against APS involving precisely this provision of A.A.C. R14-2-210.

electronics certain emissions characteristics are impossible tasks. On the other hand, providing consumers with such information based on arbitrary assumptions or plain old guesses does little to promote informed consumer choice.

- 2) The information should be useful to the clear majority of customers. Some customers may find a supplier's labor practices or the political affiliation of its president an important factor in their purchasing decision, but there are obvious limits to how much information can and should be thrown at consumers at every turn. Labeling should concentrate on price and reliability - matters obviously of interest to virtually all consumers.
- 3) ESPs should not be required to divulge competitively sensitive information. Some of the price and terms data included in Proposed Rule 1618 may well be proprietary secrets in a competitive market.

This task force should be given roughly thirty days to come up with a recommendation to Staff and the Commission.

Proposed Rule 1604(B)(5) is still only applicable to Affected Utilities. As noted in the Original Comments, the competitive ESPs will often be in a far better position to provide this information. Also, the residential "phase-in" lasts only two years, while this reporting requirement appears to last indefinitely. APS again urges Staff to adopt the language proposed by the Company in its Original Comments.

VI. STANDARD OFFER ISSUES

Proposed Rule 1606(B), although modified from Staff's first draft, is still a big problem. It is unreasonable to expect all Standard Offer power to come from competitive bidding. Short-term purchases will likely be made on a PX or similar commodities trading market. Emergency purchases will necessarily come from interconnected systems such as SRP. Yet other purchases will come from "must-run" units. The "ratchet down" requirement for long-term contracts will likely make Standard Offer power much more expensive than would otherwise be the case had more flexibility been permitted. The Company's Original Comments provided both flexibility to the contracting UDC and enhanced Commission oversight. If that is not acceptable language, then APS would suggest deleting the provision *en toto* and deferring resolution of this issue, as was suggested by AEPCO and others on July 15. Having no provision at this time is far preferable to having a bad one.

Proposed Rule 1606(A) also adds the term "provider of last resort." As first noted in the Company's response to Staff's earlier Position Paper, APS does not understand how this obligation is different from the Standard Offer and thus asks Staff to define the former term.

VII. SOLAR PORTFOLIO

APS supports a solar portfolio standard ("SPS") that is reasonable (both from a cost and technology point of view), sustainable over the long run, and non-bypassable by out-of-state ESPs and self-aggregators. Proposed Rule 1609, although a modest improvement over the original regulation, still fails to meet any of these objectives. APS will work with Staff to further refine the SPS in the months preceding January 1999.

Proposed Rule 1609(G) is still confusing. In addition to some garbled language, it is not clear whether distributed solar equipment installed by the UDC (or installed by an Affected Utility prior to 2001 and thereafter retained by the UDC) will count toward meeting the SPS of the UDC's ESP affiliate. If not, this provides a powerful disincentive for either the ESP or the UDC to promote distributed solar electric applications in lieu of substation upgrades or new substation construction. It is time to face up to the fact that the "goals" of Decision No. 58643 have been rendered meaningless by the Proposed Rules, which in addition to creating the SPS, require Affected Utilities to divest much of the very solar generation originally contemplated by Decision No. 58643. Deletion of this provision is the appropriate solution.

APS would also add one more specific concern. Proposed Rule 1609(K) makes it impossible for an ESP to know whether solar facilities it is either constructing or purchasing, or any output from such facilities will qualify for the SPS until the Director establishes technical standards for such equipment. Since no such standards have been established at present nor is any date set for their establishment, this provision is a clear disincentive for the early installation of solar facilities otherwise encouraged by Proposed Rule 1609. This provision should either be removed or modified to apply only to facilities constructed or acquired after the referenced standards are publicly issued.

VIII. ISA/ISO

As noted by Mr. Davis on July 15, APS expects to be able to provide Staff with consensus language to replace the last sentence of Proposed Rule 1610(A). Such language should be available in time to be included in any rule considered by the Commission at its August 5th Open Meeting. APS also notes that whatever the Commission and other interested parties come up with, it is FERC that will have the final say on transmission priority.

Proposed Rule 1610(H) assumes that FERC will regulate "must run" units. Although that is clearly true once these units have been divested or if they sell to an ISO, it is at least possible that these units will still be jurisdictional to the Commission on 1/1/99, and thus the language in the rule should add the phrase "if appropriate" after the word "filed" in the last sentence.

IX. MISCELLANEOUS

APS has a number of comments that fall into this category. They defy being readily grouped, and so perhaps it is best just to start with Proposed Rule 1601 and work through the balance of the Proposed Rules.

1. Substitute the term "ESP" for "entity" in Proposed Rule 1601(2). As written, it is still unclear whether third-party aggregators are or are not considered ESPs or whether they have to seek certification under Proposed Rule 1603. This simple change would clarify both issues.
 2. The term "Control Areas" is capitalized in Proposed Rule 1601(7) but is not a defined term. APS would suggest adopting the definition of "Control Area" contained in the November 18, 1997 Final Report of the Commission's Electric Systems Reliability and Safety Working Group, Appendix A at 3.
 3. The word "terms" is misspelled in Proposed Rule 1601(11).
 4. Proposed Rule 1601(13) effectively takes billing and collection, as well as information service entities out of the definition of ESP because such entities do not require certification. Since many sections of the Proposed Rules are keyed to the term ESP, this language results in exemption for these entities from many provisions of the Proposed Rules that would otherwise apply. It is not clear to the Company that such an exemption was Staff's intended result.
 5. APS would add the following additional definition to Proposed Rule 1601:

"Metering Committee" means the Commission-supported metering committee composed of representatives from Arizona Affected Utilities, ESPs doing business in Arizona, MRSPs doing business in Arizona and Commission Staff.
- The term Metering Committee appears in Proposed Rule 1613(I)(14), (15) and (16) but is nowhere defined or even described.
6. APS does not understand why its suggested language in Proposed Rule 1601(28) was not

adopted. The proliferation of unqualified schedule coordinators is clearly undesirable. Even if all Scheduling Operator "want-to-be's" were qualified, there is a limit (at least before the ISO is up and going) to how many entities can be effectively handled by the ISA or Control Area Operator. The Commission is the logical entity to determine how many Schedule Coordinators will be permitted and what will be their qualifications.

7. The definitions in Proposed Rule 1601(34) and (35) may still contradict each other. FERC defines transmission for APS as 69kV and above, which definition is therefore incorporated by reference into Proposed Rule 1601(35). Yet Proposed Rule 1601(34) defines TPV as over 25 kV. The qualifying language added to the former definition in Staff's second draft was helpful but may not fully resolve the problem. The Company's Original Comments address this issue at page 2.

8. The proposed deletion from Proposed Rule 1603(B) of the second sentence would place that provision in conflict with Proposed Rule 1611(A) and with the provisions of H.B. 2663, which prohibits competition in the service areas of certain entities without their permission.

9. Proposed Rule 1603(G)(6) requires that all "Service Acquisition Agreements" be approved by the Commission. Given the likely volume of such agreements, this requirement will prove unwieldy in practice unless the Commission can approve some standard form of agreement in advance. In addition, such agreements, to the extent they are with the Scheduling Coordinator rather than with the UDC, may well be under FERC's jurisdiction rather than the Commission's.

10. Add the modifier "single premise" after the word "individual" in Proposed Rule 1604(A)(2). In utility parlance, "customers" do not have demands - "premises" do. Also, this change would clarify which premise loads can be aggregated for customers having multiple premises. APS also asks that Staff reconsider aggregating non-residential loads less than 100 kV in this first phase. This higher threshold will eliminate the need for determining a kWh equivalent because these larger customers should all have measured demands. Keep in mind that customer aggregation at any level presents many difficult administrative issues and handling all 1 mW customers, in addition to aggregations of these larger 100 kW customers, and the residential phase-in (all of which would begin in less than five months from the time the Proposed Rules are to be considered by the Commission) is already more than enough to deal with in the first wave.

11. Add the following sentence after the end of Proposed Rule 1605(B): "However, self-aggregators are still required to obtain Service Acquisition Agreements and to comply with the provisions of R14-2-1609." This will ensure both that self-aggregators play by the same scheduling rules as ESPs and that self-aggregation does not become a means for bypassing the SPS.

12. Proposed Rule 1608(A) has the word "fuel" missing from the last sentence. Also, APS does not understand why Commission-ordered customer education programs continue to be missing from this provision. There appeared to be a broad consensus in support of this addition, and no alternative funding source is identified in the Proposed Rules. Finally, it is still unclear whether or not the SBC can be modified more frequently than triennially if the Commission orders additional or expanded social programs covered by the SBC (or if programs are eliminated or scaled down) within the three year period contemplated by this Proposed Rule. It was the consensus recommendation of the Low Income Subcommittee of the Metering and Unbundling Working Group that such a filing be required at least every three years - but that more frequent filings not be prohibited.

13. Proposed Rule 1612(C) and (D) adopted the new language from the Company's Original Comments but did not delete the original language from the first draft. As a result, it is even less clear when a contract will become effective or when a contract has to be submitted to the Director.

14. Proposed Rule 1613(H)(5) should have the words "usage and demand" inserted before the word "billing." Without this clarification, the rule literally requires all billing related data to be translated into EDI format, when the intent was only to translate data that needed to be shared between the UDC and ESP.

15. Proposed Rule 1613(H)(6) should be deleted. The previous paragraph dictates the format for both metering and billing data. This provision would require use of a VAN network, necessitating an expensive third-party vendor charging a fixed fee per transaction.

16. Add the words "direct access" before the word "customer" in Proposed Rule 1613(M) and also the words "where applicable" after the word "elements." These additions conform the text of the rule with its title and recognize that not all these elements will appear on a single bill in the situation of multiple billing entities. The former addition is a particularly important change and should not be lost simply because it is buried in the MISCELLANEOUS section of these comments. APS doubts that it is physically possible to modify its billing system by 1/1/99 to add this level of detail to Standard Offer bills - a task not required under the rules as they were passed in 1996. Moreover, unbundling the billing for Standard Offer customers will result in unbundled elements that do not add up to the bundled charge shown on the bill. This will greatly confuse customers and lead to misleading comparisons between the customer's bundled bill and that which he might receive as a direct access customer.

17. Proposed Rule 1613(I) requires a number of small, yet significant changes. APS lists them below:

- a) Delete the words "from the meter to the billing company" and substitute "from the MRSP to the ESP, Scheduling Coordinator and UDC" in Proposed Rule 1613(I)(6). As written, the provision requires a dedicated Internet connection for every meter, which was not the intent of this section.
- b) Add a second sentence to Proposed Rule 1613(I)(8): "For new accounts with no prior history, the UDC's estimated kW load used for the service entry design will be used as the measure of such customer's demand for purposes of this provision." This will clarify how loads will be determined when a new customer is added to the UDC system.
- c) Delete the words "for metering purposes" from Proposed Rule 1613(I)(13) and add the following in their place: "when monitoring response time performance requirements related to metering and billing." This reflects the intent of this provision as discussed in the Metering Committee.
- d) Add the word "competitive" before the word "primary" in Proposed Rule 1613(I)(14) and the words "for competitive customers" at the end of both Proposed Rule 1613(I)(15) and (16). It was always the intent of the Metering Committee that these provisions only apply to non-Standard Offer metering services.

18. Proposed Rule 1618(A) and (H) uses the term "load serving entity," but that term is no longer defined. This appears to be an oversight because the first Staff draft did contain such a definition.

19. Lastly, Article 2 of the Proposed Rules requires the following non-substantive changes:

- a) Proposed Rule 209(E)(2)(b) - Typo in first line;
- b) Proposed Rules 210 and 211 - Change "LDC" to "UDC;" and,
- c) Proposed Rule 210(B)(1) - Typo (third line is repeat).

X. CONCLUSION

I hope you have found these supplemental written comments helpful. I realize they have been extensive and detailed, but they are offered out of a sincere desire on the part of APS to see

Ray T. Williamson
July 22, 1998
Page 15

the implementation of electric competition go as smoothly as is possible. As before, I and my staff are at your disposal should you have any questions about either these comments or the Company's Original Comments.

Sincerely,

A handwritten signature in cursive script that reads "Donald G. Robinson / Bk." The signature is written in dark ink and is positioned above the printed name.

Donald G. Robinson

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

AUG 29 2 29 PM '98

JIM IRVIN
COMMISSIONER-CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

DOCKET NO. RE-00000C-94-0165

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

APPLICATION FOR REHEARING AND/OR RECONSIDERATION
BY
ARIZONA PUBLIC SERVICE COMPANY

Arizona Public Service Company ("APS" or "Company") hereby submits its Application for Rehearing and/or Reconsideration ("Application") of Decision No. 61071 (August 10, 1998) (the "Decision"). In Decision No. 61071, the Arizona Corporation Commission ("Commission") adopted "emergency" amendments to existing administrative rules ("Amended Rules") dealing with the provision of competitive electric service in Arizona.

APS fully supports a transition to retail competition in electric power generation. It has participated in every Commission workshop, working group, or task force, as well as in more formalized proceedings. It has repeatedly submitted comments to the Commission, both written and oral. In each instance, APS has attempted to work toward the smooth and equitable implementation of retail electric generation competition by January 1, 1999. The Commission, however, also must nurture this transition in a lawful and well-reasoned manner. The Amended Rules do not satisfy this objective.

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1 Application for Rehearing are incorporated herein by reference.) The Legislature, in H.B. 2663,
2 enacted provisions that “confirmed the Commission’s authority” to undertake various measures in
3 the transition to competition in electric generation service. For the reasons argued in APS’s
4 January 10, 1997 Application for Rehearing, however, the Commission had no authority that the
5 Legislature could “confirm.” Accordingly, the language in H.B. 2663 “confirming” the authority
6 of the Commission does not grant the Commission the authority necessary to adopt either Decision
7 No. 59943, or the Amended Rules in Decision No. 61071. Alternatively, if the Legislature did
8 intend to affirmatively delegate certain statutory authority to the Commission, such delegation was
9 necessarily limited by the terms of the statute, and the Amended Rules exceed the authority, if any,
10 that was lawfully delegated to the Commission.

11 12 **III. THE AMENDED RULES VIOLATE THE DUE PROCESS RIGHTS OF “AFFECTED UTILITIES”**

13 The Amended Rules violate APS’s constitutional rights to due process of law. First,
14 portions of the Amended Rules violate substantive due process because they are unreasonable,
15 arbitrary and capricious, and lack a real and substantial relation to the goal of retail electric
16 competition. These include, among others, the provisions on divestiture, affiliate restrictions and
17 the solar portfolio standard. Second, the Amended Rules impose contradictory prohibitions and
18 obligations that simply cannot be reconciled. For example, R14-2-1606(D) requires an Affected
19 Utility to provide billing and collection services to “all eligible purchasers”; R14-2-1616(B),
20 however, prohibits an Affected Utility from providing billing and collection services to “all
21 eligible purchasers.” Such inconsistency, in addition to other vague, ambiguous and contradictory
22 provisions of the Amended Rules, violates APS’s due process rights.

23 Finally, APS has still not been accorded notice and an evidentiary hearing regarding
24 the revocation by the Amended Rules of its exclusive CC&N’s. The Amended Rules even
25 accelerate the final step of that revocation from 2003 to 2001. Moreover, the Company’s right to
26

1 continue providing certain electric services on a non-exclusive basis is revoked under the
2 Amended Rules.

4 **IV. THE AMENDED RULES REPRESENT AN UNCOMPENSATED "TAKING"**

5 Although the Amended Rules continue to recognize that an Affected Utility shall
6 have "a reasonable opportunity for recovery of unmitigated Stranded Costs", the Amended Rules
7 fail to address the "taking" of the exclusive nature of a Certificate of Convenience and Necessity
8 ("CC&N"). The Amended Rules do not provide for compensation for the taking of exclusive
9 CC&Ns, create no mechanism to determine the appropriate compensation due an Affected Utility
10 for such taking, nor include the value of an exclusive CC&N in the definition of "Stranded Costs"
11 or the enumerated factors to be considered in connection with Stranded Costs.

12 Second, the Amended Rules make no provision for the recovery of Stranded Costs
13 incurred after 1996 (including the significant cost of compliance with the Amended Rules), or in
14 connection with non-generation services such as metering, meter reading, and billing and
15 collection. The Amended Rules not only mandate that these services be competitive, but further
16 mandate at least a partial divestiture of assets used to provide such services. Moreover, to the
17 extent the Commission interprets the Amended Rules as authorizing less than a reasonable
18 opportunity for full stranded cost recovery, even using the Commission's definition of stranded
19 costs, the Amended Rules are an uncompensated taking.

20 **V. THE AMENDED RULES IMPAIR THE VESTED CONTRACT** 21 **RIGHTS OF "AFFECTED UTILITIES"**

22 Rule R14-2-1606(B) provides that after January 1, 2001, a Utility Distribution
23 Company may only purchase power through competitive bid (except for purchases made through
24 spot markets). This restriction substantially impairs existing power supply contracts, and there is
25 no public urgency or need alleged or shown for such impairment. This restriction violates Article
26 1, § 10 of the United States Constitution and Article II, § 25 of the Arizona Constitution.

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**VI. THE AMENDED RULES DENY “AFFECTED UTILITIES”
EQUAL PROTECTION OF THE LAW**

The Amended Rules unreasonably discriminate against Affected Utilities without rational basis. For example, Rule R14-2-1616 requires Affected Utilities to legally separate all generation assets and competitive services from the Affected Utility’s non-competitive electric distribution business. The Amended Rules, however, require no such legal separation of Electric Service Providers, even though these providers may provide monopoly electric services in Arizona and other states or jurisdictions. Further, Rule R14-2-1617 imposes extremely burdensome affiliate transaction standards on Affected Utilities (and Utility Distribution Companies), but does not impose similar restrictions on competing Electric Service Providers, some of which may be affiliates of entities providing monopoly service in other states or that are otherwise in a position to unfairly cross-subsidize. For example, Rule R14-2-1617(E) requires Affected Utilities and Utility Distribution Companies to conduct expensive outside audits annually from 1999 through 2002, even if there is no suspicion of affiliate abuses. These audit requirements, however, do not apply to Electric Service Providers, even if affiliated with a regulated entity such that affiliate abuses could occur. The Amended Rules provide no explanation or justification for such disparate treatment of Affected Utilities.

**VII. THE AMENDED RULES VIOLATE THE ARIZONA ADMINISTRATIVE
PROCEDURE ACT**

In Decision No. 61071, the Commission concluded that “[a]doption of the proposed rules on an emergency basis is necessary for the immediate preservation of the public health, safety and welfare, and the notice and participation requirements are impracticable.” (Decision No. 61071 at 2.) The Commission, however, has failed to make sufficient findings as to why the Amended Rules (or parts thereof) are necessary as an emergency measure. *See* A.R.S. § 41-1026. Rather, the Commission makes a conclusory statement that “[d]ue to the need to adhere to the

1 originally approved deadline of January 1, 1999” the Amended Rules are necessary as an
2 emergency measure. The Commission’s “emergency” determination is invalid absent more
3 detailed and supportable findings (1) of which portions of the Amended Rules meet the criteria for
4 emergency rulemaking, (2) that the emergency was not created by the Commission’s delay or
5 inaction, and (3) why the need to adhere to the January 1, 1999 deadline should take precedence
6 over a reasoned decision-making process on the rules governing electric competition. Also, the
7 Commission has failed to submit the emergency rules to the Attorney General for his approval (as
8 to the existence of an “emergency”), as is required by A.R.S. § 41-1026.

9 Because the Amended Rules are not properly considered emergency rules, the
10 Commission has violated the requirements of the Arizona Administrative Procedure Act in failing
11 to prepare a Concise Explanatory Statement, failing to prepare an Economic, Small Business and
12 Consumer Impact Statement, and failing to seek Attorney General certification of the Amended
13 Rules. The Commission’s attempt to end-run the rulemaking process in adopting Decision No.
14 61071 and the Amended Rules is thus unlawful pursuant to A.R.S. § 41-1030.

15
16 **VIII. THE AMENDED RULES VIOLATE THE RATE REDUCTION AGREEMENT**

17 The Rate Reduction Agreement (“Agreement”) between APS and Commission Staff,
18 approved in Decision No. 59601 (April 24, 1996), prohibits any party from seeking to change
19 rates, other than as permitted in the Agreement, before July 2, 1999. The Amended Rules,
20 however, appear to contemplate such a change in rates. *See, e.g.,* R14-2-1604. Therefore, to the
21 extent that the Amended Rules are construed as requiring or authorizing a reduction in APS rates
22 that is effective prior to July 2, 1999, they would violate that Agreement.

23
24 **IX. THE AMENDED RULES CREATE AN UNLAWFUL OBLIGATION TO SERVE**

25 In Arizona, the obligation of a public utility to serve is legally dependant on the
26 utility having an exclusive right to serve. *See James P. Paul Water Co. v. Ariz. Corp. Comm’n,*

1 137 Ariz. 426, 671 P.2d 404 (1983). Despite this authority, the Amended Rules continue to
2 require APS to shoulder the obligation to serve in areas in which APS has no exclusive rights and
3 for which other Electric Service Providers have no similar obligation, and without adequate
4 assurances that APS will be fairly compensated for its performance of this obligation.

5
6 **X. RULE R14-2-1609 OF THE AMENDED RULES**
7 **UNLAWFULLY INTERFERES WITH THE MANAGEMENT OF**
8 **“AFFECTED UTILITIES”, IS OTHERWISE**
9 **ARBITRARY AND UNREASONABLE, AND IS NOT A**
10 **PROPER SUBJECT FOR EMERGENCY RULEMAKING**

11 In the original Competition Rules, the Commission set forth a “solar portfolio
12 standard” that, among other things, required sellers of competitive retail energy to include a certain
13 minimum amount of solar energy in these competitive sales. In the Amended Rules, the
14 Commission adopted substantial revisions to the original rule. For the same reasons set forth in
15 APS’s January 10, 1997 Application for Rehearing (which is incorporated by reference), the
16 Amended Rules still unlawfully interfere with the investment decisions of management, and
17 unlawfully and arbitrarily dictate specific renewable technologies. Further, the Amended Rules
18 impose purely arbitrary and unreasonable renewable percentages.

19 The Commission has attempted to shield its significant changes (over five double-
20 spaced pages) to the solar portfolio standard from the rulemaking process by applying the
21 “emergency” rules procedures to this rule. APS is committed to advancing the development and
22 use of renewable energy technologies, and continues to maintain a leadership position in the
23 development of renewable energy supplies. Surely, however, the inclusion of solar renewable
24 standards in the Amended Rules does not constitute an “emergency” such that the Commission
25 may waive the reasoned, deliberative process of a formal rulemaking proceedings on this
26 important (but not a life-, health- or safety-threatening) issue.

1 **XI. THE AMENDED RULES ARE NOT SUPPORTED BY**
2 **SUBSTANTIAL EVIDENCE DO NOT REFLECT REASONED**
3 **DECISION-MAKING, AND ARE ARBITRARY,**
4 **CAPRICIOUS, AND AN ABUSE OF DISCRETION**

5 The “emergency” rulemaking process employed in adopting the Amended Rules
6 provided little, if any, “record” upon which the Commission could base its decision. Numerous
7 parties, however, voiced concerns over the Amended Rules at the public meetings and in letter
8 comments to Commission Staff.

9 Important elements of the Decision have no support in the record for this docket. For
10 example, there is no evidence in the record that the “labeling” requirements set forth in R14-2-
11 1618 are either reasonably available, helpful to consumers, or wanted by consumers. There is,
12 however, evidence in the record that much of the information required is not reasonably available,
13 is not particularly helpful to consumers, and could cause confusion. Divestiture is another
14 example where the Amended Rules fly in the face of uncontroverted evidence that such divestiture
15 is unnecessary, impractical, and perhaps even impossible. Moreover, the Commission has failed
16 to articulate a reasoned explanation for why the approaches to these issues set forth in the Decision
17 are superior to alternative approaches offered by APS and other parties.

18 The Commission’s action in ignoring or contradicting the evidence in the record
19 when adopting the Amended Rules is arbitrary, capricious and an abuse of discretion.

20 **XII. THE AMENDED RULES INVADE THE**
21 **EXCLUSIVE JURISDICTION OF FERC**

22 The “buy-through” transactions contemplated by A.A.C. R14-2-1604 include a
23 transmission component subject to the exclusive jurisdiction of FERC. *See* FERC Docket No.
24 RM95-8-000 (March 29, 1995), at 99-100. The Amended Rules clearly assert full Commission
25 jurisdiction over such agreements despite FERC’s assertion of preempting jurisdiction over the
26 transmission component of “buy-through” transactions.

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**XIII. THE AMENDED RULES CONSTITUTE AN
UNCONSTITUTIONAL BILL OF ATTAINDER**

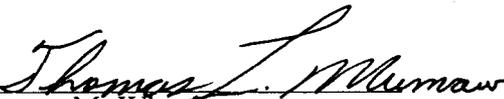
The Amended Rules impose punitive conditions on Affected Utilities, which are specifically-named public service corporations under the Amended Rules, without affording Affected Utilities a judicial trial for abuses that are presumed by the Commission. Accordingly, the Amended Rules violate the Bill of Attainder Clause in Article I, Section 10 of the United States Constitution and in Article II, Section 25 of the Arizona Constitution.

XIV. CONCLUSION

The Amended Rules continue to exceed the Commission's authority in many respects. They are also procedurally invalid and confiscate property vested in an Affected Utility. Finally, they impose arbitrary, unreasonable and discriminatory requirements on APS and other "Affected Utilities." The Commission should vacate Decision No. 61071 and amend the Competition Rules as recommended by the Company.

RESPECTFULLY SUBMITTED this 28th day of August, 1998.

SNELL & WILMER L.L.P.

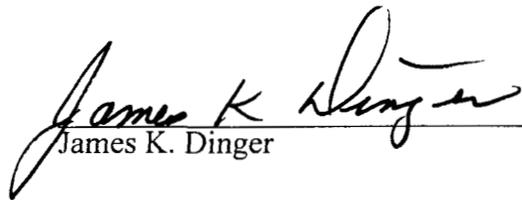
By 
Steven M. Wheeler
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Attorneys for Arizona Public
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CERTIFICATE OF SERVICE

The original and ten (10) copies of the foregoing document were filed with the Arizona Corporation Commission on this 28th day of August, 1998, and service was completed by mailing or hand-delivering a copy of the foregoing document this 28th day of August, 1998 to all parties of record herein.


James K. Dinger

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EXHIBIT B

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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION

DEC 9 3 51 PM '98

JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

DOCUMENT CONTROL

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

**EXCEPTIONS OF ARIZONA PUBLIC SERVICE COMPANY
TO THE RECOMMENDED ORDER OF DECEMBER 4, 1998 ON THE
COMMISSION'S AMENDED ELECTRIC COMPETITION RULES**

Arizona Public Service Company ("APS" or "Company") hereby submits its Exceptions to the Recommended Opinion and Order dated December 4, 1998 ("Recommended Order") in the above captioned matter. Such Recommended Order adopts permanent amendments to the original electric competition rules, which were enacted at the end of 1996 ("Electric Competition Rules"). These amended Electric Competition Rules ("Amended Rules") largely confirm amendments to the Electric Competition Rules adopted on an "emergency" basis by Decision No. 61071 (August 10, 1998).

Neither the Amended Rules nor for that matter the original Electric Competition Rules can be practically implemented at this time because of the circumstances described below, namely a Supreme Court Justice's stay of proceedings on the APS and Tucson Electric Power Company ("TEP") Settlement Agreements. Therefore, the Arizona Corporation Commission ("Commission") should defer consideration of the Amended Rules and reopen the proceedings to properly align the various provisions and time schedules of the Amended Rules with the realities of current circumstances.

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One Arizona Center
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1 The indefinite stay of Commission proceedings to consider the APS and TEP Settlement
2 Agreements obtained by the Arizona Attorney General and various consumer groups is the latest
3 and most unexpected complication in the long struggle to devise a reasonable set of Electric
4 Competition Rules and to implement those Rules by January 1, 1999. Implicit in such stay was
5 the concern that the Commission was moving too quickly to implement competition and that
6 absent unanimous agreement of the parties (virtually an impossibility given the nature of the issues
7 involved), each issue on the road to competition would have decided only after extensive
8 additional debate. The stay has ended any remaining chance of starting competition on 1/1/99 and
9 given the number of unresolved issues and the concern expressed in the stay over the procedures
10 necessary to resolve such issues, the delay in implementing competition could be substantial.
11 This, in turn, will necessitate a fundamental reevaluation of the Electric Competition Rules
12 themselves, regardless of which set of amendments thereto are eventually to be considered by the
13 Commission.

14 Since early December of 1995, more than a year before the Commission's passage of
15 Decision No. 59943 (December 26, 1996), APS has publicly stated and consistently maintained
16 that the Commission needed to resolve numerous issues prior to the introduction of retail electric
17 competition. These included unbundled tariffs, market structure, reliability, jurisdictional
18 boundaries between the Commission's jurisdiction and that of the Federal Energy Regulatory
19 Commission ("FERC"), the status and regulation of "must run" generation, etc. Indeed, APS'
20 inability to submit unbundled tariffs on December 31, 1997 was premised on the lack of any
21 consensus as to how these issues were to be resolved and the lack of any scheduled Commission
22 proceeding to resolve them. Although APS did make a filing on February 13, 1998, in the
23 Company's transmittal letter, it made no pretence that any of these issues had been addressed by
24 the Commission:

25 Although none of the issues identified in the Company's letter of December 31st
26 have been resolved, APS has subsequently attempted to "fill in the gaps" necessary to
comply with at least the spirit of the above-cited regulations. [*Id.* at 1.

1 With the failure of the APS and TEP Settlements, the Commission still has been unable to
2 decide any of these issues as they affect the Company, and therefore competition by 1/1/99 is
3 impossible to implement. A symbolic opening of a portion of the Arizona market is a futile
4 gesture at best and heightens the frustration and perceived disadvantage of those customers of APS
5 and TEP who, through no fault of either themselves or the utilities involved, are not able to take
6 advantage of competitive choices.

7 APS has just as consistently maintained that the Electric Competition Rules were
8 themselves significantly deficient due to numerous ambiguities and inconsistencies in the
9 definition and use of key terms, internal inconsistencies in the substance of the Electric
10 Competition Rules, and the lack of constitutional authority to impose many elements of the
11 electric industry restructuring called for by the Electric Competition Rules.

12 The Amended Rules adopted by the Recommended Order, as well as the Recommended
13 Order itself, are unjust, unreasonable and unlawful for the reasons set forth below and should be
14 modified accordingly. Significantly, the Recommended Order is not, nor does its purport to be,
15 the actual recommendation of the two presiding hearing officers, as is required by A.A.C. R14-3-
16 110, and thus is not even properly before the Commission for final consideration..

17
18 **I. THE COMMISSION SHOULD REOPEN THIS RULEMAKING PROCEEDING IN**
19 **LIGHT OF THE SUPREME COURT'S STAY OF COMMISSION ACTION ON**
20 **THE APS AND TUCSON ELECTRIC POWER COMPANY SETTLEMENT**
21 **AGREEMENTS**

22 All the various versions of the Electric Competition Rules anticipated that various actions
23 would be completed well before January 1, 1999. Perhaps the more obvious of these are the
24 certification by the Commission of competitors and the approval of unbundled tariffs under which
25 those customers choosing direct access can take service. The recent APS and TEP Settlement
26

1 Agreements would have allowed these preconditions to competition to be met prior to 1/1/99.¹
2 Due to the recent indefinite stay on the Commission's consideration of these two settlements,
3 which was obtained by the Arizona Attorney General and various consumer groups, the entire
4 underpinning of the Electric Competition Rules, and most certainly the timing of competition's
5 introduction, has been called into question.

6 APS urges the Commission to reopen these rulemaking proceedings to take additional
7 public and industry comments in view of the inability of the Commission to act on the APS and
8 TEP Settlement Agreements prior to 1/1/99. In addition, the Commission should stay the
9 effectiveness of the Electric Competition Rules, including the Emergency Amendments (at least as
10 applied to APS and TEP), until after the Special Action filed by the Attorney General is either
11 dismissed or the current Supreme Court stay is dissolved by the full Court and until the many
12 issues addressed by these two settlements are finally resolved such that competition can be more
13 than a legal fiction. This delay, although regrettable and in no way the fault of the Company, is
14 now inevitable and should be acknowledged by the Commission.

15
16 **II. THE AMENDED RULES ARE NOT SIGNIFICANTLY DIFFERENT FROM**
17 **THE EMERGENCY AMENDMENTS AND THEREFORE APS' PREVIOUS**
18 **COMMENTS THEREON ARE STILL VALID**

19 With the exception of the Staff's proposed amendments of November 24, 1998, which for
20 the most part are "housekeeping" amendments to satisfy the requirements of the Secretary of State,
21 the Amended Rules are essentially the same as the Emergency Amendments to the original
22 Electric Competition Rules. Staff's unsupported assertions that this or that provision of the
23 Electric Competition Rules is not ambiguous or internally inconsistent are belied by the fact that
24 commentator after commentator find them to be so. To the extent that the Amended Rules do not

25 _____
26 ¹ In addition to approving unbundled tariffs, these agreements would have led to the timely
certification of APS Energy Services and New Energy Ventures, which along with PG&E would
have allowed competition to begin with at least three authorized competitors.

1 address the concerns raised by the Company in its Application for Rehearing and/or
2 Reconsideration of Decision No. 61071, which Application is hereby incorporated by reference,
3 APS urges the Commission to take whatever time is necessary to amend the Recommended Order
4 consistent with those prior comments.

5
6 **III. THE AMENDED RULES RAISE NEW ISSUES UPON WHICH APS HAS NOT**
7 **HAD AN OPPORTUNITY TO COMMENT OR WHICH DO NOT REFLECT**
8 **STAFF'S POSITION IN THE PG&E ENERGY SERVICES, INC.,**
9 **CERTIFICATION PROCEEDING AND IN THE COMPANY'S SCHEDULE 10**
10 **PROCEEDING**

11 This part of the Company's Exceptions is a combination of new comments based on Staff
12 revisions to the Emergency Amendments or upon positions taken by Staff and/or the Commission
13 in subsequent proceedings which are inconsistent with language in the Electric Competition Rules,
14 either as originally passed or as subsequently amended. Also, the continued passage of time has
15 mooted several more provisions of these Rules. The Company's comments are presented in
16 Attachment 1 and are arranged sequentially, without attempting to prioritize them by importance.

17 **IV. THE RECOMMENDED ORDER DOES NOT COMPLY WITH A.A.C. R14-3-110**

18 A.A.C. R14-3-110 (B) requires that in all proceedings heard by a Hearing Officer, the
19 Hearing Officer is obligated to submit to the Commission his or her "recommendation...unless
20 otherwise ordered by the Commission." The Commission can thereafter accept, reject or modify
21 that recommendation. However, the Procedural Order accompanying the Recommended Order
22 clearly indicates that the attached Opinion and Order was not, in any meaningful sense, the
23 "recommendation" of either of the Presiding Hearing Officers, but was instead an Opinion and
24 Order that the Hearing Division believed was ordered by Decision No. 61257 (November 25,
25 1998).

26 Although A.A.C. R14-3-110 (B) does purport to allow the Commission to bypass the
Recommended Order requirement, APS believes that Decision No. 61257 neither authorized or

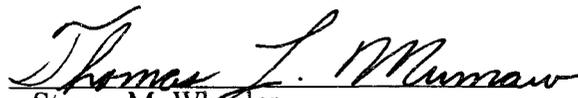
1 directed such a procedural "shortcut." Decision No. 61257 addressed only the timing of the
2 issuance by the Presiding Officers of a Recommended Order and did not dictate that a
3 Recommended Opinion and Order be issued that was not, in fact, their recommendation. The
4 Commission should direct that the Hearing Division complete its analysis of the record, including
5 any new comments submitted, and thereafter forward a new Recommended Order, which is in fact
6 the impartial recommendation of the presiding officers in this matter.

7
8 **V. CONCLUSION**

9 The Recommended Order is deficient in numerous respects, as are the Amended Rules.
10 APS has suggested numerous amendments that will greatly clarify, simplify, and improve the
11 operation of the Electric Competition Rules. However, even with the amendments suggested by
12 the Company herein, the Supreme Court stay obtained by the Attorney General and certain
13 consumer groups makes implementation of the Amended Rules impossible at the present time and
14 perhaps for some time to come. In light of the Court's action, the Commission should reopen this
15 docket, seek additional public comments from all affected parties on the Electric Competition
16 Rules and stay the effectiveness of the current competition regulations until both the Attorney
17 General's Special Action is dismissed and/or the Supreme Court stay on Commission
18 consideration of the APS and TEP Settlements is lifted and the unresolved issues from such
19 Settlements are finally determined. Only then can competition be made a practical reality and not
20 just another meaningless set of government regulations.

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

22 SNELL & WILMER L.L.P.

23
24 
25 Steven M. Wheeler
Thomas L. Mumaw

26 Attorneys for Arizona Public Service Company

1 ATTACHMENT 1

2
3 A.A.C. R14-2-1601(10):

4 This amendment defines Direct Access Service Request (“DASR”) as including requests
5 by the end-user. Staff’s changes to the Company’s proposed Schedule 10, which were adopted by
6 the Commission, eliminate the possibility of a direct access request by a customer. Thus, the
7 words “or the customer” should be deleted from the end of the proposed definition to avoid
8 confusion on this point.

9 A.A.C. R14-2-1601(22):

10 Delete words “or aggregators” from the end of this definition. “Aggregators” is defined
11 [A.A.C. R14-2-1601(2)] such that they are ESPs. Thus, they can not be both included and
12 excluded from the definition of “Load Serving Entity.”

13 A.A.C. R-14-2-1601 (29):

14 Place a comma after “Standard Offer [S]ervice.” Otherwise, the sentence has a completely
15 different meaning.

16 A.A.C. R-14-2-1603(A):

17 Delete words “and self-aggregators are required to negotiate a Service Acquisition
18 Agreement consistent with subsection G(6).” As noted above, Staff’s and the Commission’s
19 previous changes to the Company’s Schedule 10 effectively eliminate the concept of self-
20 aggregation, and thus there is no need or this language.

21 A.A.C. R14-2-1604(A):

22 The language in the second full sentence to this amendment (allowing 180 days from the
23 filing of the DASR to the initiation of competitive service) is inconsistent with prior actions of this
24 Commission and is intended to benefit only special contract customers at the expense of all other
25 potentially eligible customers. Because the proposed language conflicts with the specific and
26 controlling provisions of Schedule 10 approved by this Commission, it is likely to lead to

1 unnecessary confusion and controversy. For example, Cyprus Climax Metals (“Cyprus”) has a
2 special contract with APS that expires May 1, 1999. But for the approval of Schedule 10, this
3 amendment could require APS to reserve some 10-15% of its otherwise eligible load for Cyprus,
4 and would make a mockery of the concept “first-come, first served.” The “180 days” should be
5 replaced by “60 days”, which is what the Staff recommended and the Commission approved in the
6 Company’s recent Schedule 10 filing.

7 A.A.C. R14-2-1604(A)(1):

8 Add “single premise” after “non-coincident.” This makes paragraph 1 consistent with the
9 language in A.A.C. R14-2-1604(A)(2).

10 A.A.C. R14-2-1604(A)(3); 1604(B)(4); 1604(C); 1607(D); and 1610(H):

11 These provisions all contain filing dates that have already passed (and thus are moot) and
12 which are not especially necessary in order to understand other provisions of the Amended Rules.

13 APS suggests that they be deleted.

14 A.A.C. R14-2-1605(B):

15 The last sentence is redundant. *See* A.A.C. R14-2-1601(2) and (15).

16 A.A.C. R14-2-1606(D):

17 Delete the colon and add the following sentence after the word “rules”: “such tariffs may
18 combine one or more competitive services within any other competitive service.” This is
19 consistent with the Staff’s position in the PG&E certification proceeding.

20 A.A.C. R14-2-1606(H)(2):

21 This provision is totally inconsistent with Staff’s position in the PG&E proceeding,
22 excepting as to distribution and other non-competitive services. The following language should be
23 substituted: “The unbundled rates for Non-Competitive Services shall reflect the costs of
24 providing the services.”

25 A.A.C. R14-2-1607(G):

26 Add word “tariffed” before “rate treatment” and after “current” and before “rates.” This

1 would clarify that special contract customers are not automatically entitled to special benefits even
2 after the expiration of their contracts.

3 A.A.C. R14-2-1616(B):

4 This amendment still fails to address “information services,” which Staff agreed in the
5 PG&E proceeding has no commonly agreed upon definition. APS is still required to provide this
6 service under Rule 1606(D) but at the same time prohibited from providing it under 1616(B). The
7 solution to this internal contradiction is to delete all but the first sentence of Rule 1616(B) and to
8 delete “by these rules or” from that first sentence, as well as deleting Rule 1606(D)(6).

9 APS also opposes being required to provide any competitive services. Providing and
10 reading direct access meters as well as providing combined billing will require a very significant
11 new up front investment in both equipment and personnel. It makes no sense to require UDCs to
12 make this investment if they are to be effectively out of these businesses in two years (sooner if
13 two competitors are authorized). Moreover, the portion of this regulation allowing the customer to
14 chose combined billing is inconsistent with Staff’s position, as adopted by the Commission, in the
15 APS Schedule 10 proceeding, wherein it was decided that the ESP determined which of the
16 available billing options would be employed.

17 The fifth sentence of A.A.C. R14-2-1616 (B) should be changed to read as follows:

18 Notwithstanding any other provision of this Article, Affected Utilities and
19 Utility Distribution Companies may provide, if requested by an Electric Service
20 Provider, metering, meter reading, billing, and collection services within their service
territories under tariffs complying with the requirements of R14-2-1606 and R14-2-1612
for other competitive services.

21 The balance of proposed subsection (B) should then be eliminated.

22 A.A.C. R14-2-1618(B):

23 In the PG&E proceeding, Staff agreed that a “Load Serving Entity” only had to disclose
24 information reasonably available to it and that with regard to (B)(4)-(6), a “don’t know” would
25 comply with this provision. Therefore, the words, “to the extent reasonably available to the Load
26 Serving Entity,” should be added after the word “that”, and an additional sentence added that

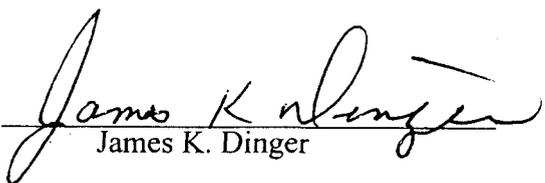
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states: "If the Load Serving Entity does not know with reasonable accuracy the information listed above, it shall so indicate in its consumer information label."

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CERTIFICATE OF SERVICE

The original and ten (10) copies of the foregoing document were filed with the Arizona Corporation Commission on this 9th day of December, 1998, and service was completed by mailing or hand-delivering a copy of the foregoing document this 9th day of December, 1998, to all parties of record herein.


James K. Dinger

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EXHIBIT C



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December 28, 1998

Mr. Ray Williamson
Acting Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Re: Application of PG&E Energy Services Corporation For A
Certificate of Convenience and Necessity

Dear Mr. Williamson:

Pursuant to the proposed Opinion and Order dated December 16, 1998, all exceptions to the recommended Order are to be filed on or before 4:00 p.m., December 28, 1998. Enclosed are the Exceptions of Arizona Public Service Company.

If you have any questions, please call me at 250-2031.

Sincerely,

Barbara A. Klemstine
Manager
Regulatory Affairs

BAK/JKD/pb

Enclosure

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BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF)
PG&E ENERGY SERVICES CORPORATION)
FOR A CERTIFICATE OF CONVENIENCE)
AND NECESSITY TO SUPPLY COMPETITIVE)
SERVICES AS AN ELECTRIC SERVICE)
PROVIDER PURSUANT TO A.A.C.)
R-14-2-1601 ET SEQ.)

DOCKET NO. E-03595A-98-0389

**EXCEPTIONS OF ARIZONA PUBLIC SERVICE COMPANY
TO THE RECOMMENDED ORDER OF DECEMBER 16, 1998 ON PG&E ENERGY
SERVICES' APPLICATION FOR A COMPETITIVE CC&N**

Arizona Public Service Company ("APS" or "Company") hereby submits its Exceptions to the Recommended Opinion and Order dated December 16, 1998 ("Recommended Order") in the above captioned matter. The Recommended Order proposes granting PG&E Energy Services Corporation ("PG&E") a CC&N to provide competitive services, subject to certain conditions.

As APS stated both in direct testimony and post-hearing briefing, APS does not oppose PG&E's entry into the competitive marketplace. APS does, however, take exception to the Recommended Order in those areas in which it falls short or fails to clearly address central issues to the proceeding. First, the Arizona Corporation Commission ("Commission") must ensure that all players in the competitive market, including out-of-state providers such as PG&E, are treated the same from the standpoint of affiliate relationships with a regulated utility distribution company. Second, APS disagrees with the analysis in the Recommended Order of the Commission's ability, under existing legal authority, to involuntarily amend or revoke APS'

1 CC&Ns and, because the Commission consolidated a hearing pursuant to A.R.S. § 40-252 with
2 this proceeding, the Recommended Order must contain a conclusion of law regarding the specific
3 action taken by the Commission on APS' CC&Ns. Indeed, although the Recommended Order
4 implies that the Commission is attempting to overrule the Arizona Supreme Court's holding in
5 *James P. Paul Water Co. v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404
6 (1983), the Commission should state such a position expressly as a Conclusion of Law if that is its
7 intent.

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9 **I. AFFILIATE TRANSACTION RULES**

10 PG&E and Staff assert that the affiliate transaction rules in R14-2-1617 do not apply to
11 check anticompetitive conduct or cross-subsidization when a competitive ESP is an affiliate of an
12 out-of-state regulated utility distribution company. Such assertions are not only legally unsound,
13 but are unwise from a policy standpoint.

14 The issue of cross-subsidization of unregulated activity by captive ratepayers does not
15 evaporate simply because the monopoly affiliate of the competitive ESP is located out of state. A
16 competitive affiliate can still use revenues received from captive ratepayers to subsidize its
17 competitive activity in Arizona. *Cf.* R14-2-1617(A)(8). The out-of-state regulated utility could
18 still transfer goods and services below fair market value to its competitive affiliate. *Cf.* R14-2-
19 1617(A)(7). The Recommended Order acknowledges these threats by requiring that PG&E
20 "cooperate" with the Commission in investigations of complaints, including complaints regarding
21 cross-subsidization from PG&E's regulated affiliate in California. If anything, however, the threat
22 of cross-subsidization in situations where this Commission is not overseeing the regulated affiliate
23 of an ESP is greater than when the Commission is regularly involved in such oversight and is
24 familiar with the operations of the distribution affiliate, as is the case with an Arizona-based UDC.
25 Accordingly, the application of the Affiliate Transaction Rules to PG&E is entirely appropriate.

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The Recommended Order recites APS' assertion that the:

suggestion that an Arizona Affected Utility would have to or even could make a complaint to the California Public Utilities Commission ('CPUC') about anti-competitive subsidies or other violations of the separation provisions rather than to this Commission borders on the ridiculous.

(Recommended Order at 9.) The Recommended Order, however, does not analyze the issue to somehow reach an opposite conclusion, but merely recites Staff's position and the position of various other parties. The conclusion of the Commission on the application of the affiliate transaction rules should be set forth in the Analysis section of the Recommended Order. Further, APS proposes that the following language be added as an additional Conclusion of Law: "So long as Energy Services is affiliated with a regulated utility, the provisions of A.A.C. R14-2-1617 shall apply to Energy Services." The Commission should order Energy Services to file a compliance plan pursuant to A.A.C. R14-2-1617(E) within 30 days of the date of the Commission's order.

There is no sound basis for exempting competitive affiliates of out-of-state regulated utilities from the affiliate transaction rules in R14-2-1617. Accordingly, the Commission should make explicit from the outset that PG&E is bound by the same affiliate transaction rules as in-state competitive affiliates. There is no reason for a double standard.

II. THE JAMES P. PAUL DECISION.

The Recommended Decision confirms that in addition to evaluating PG&E's application, the A.R.S. § 40-252 hearing on revoking, altering or amending the CC&Ns of the Affected Utilities was consolidated with the CC&N proceeding. The Recommended Order further recites the Affected Utilities' position that, absent a finding that the Affected Utilities have failed in their duty to provide service, a CC&N cannot be revoked, altered or amended under existing law.

In its Post Hearing Reply Brief, APS demonstrated that neither the Maricopa County Superior Court minute entry orders in the Competition Rules litigation nor H.B. 2663, which merely confirmed whatever preexisting authority the Commission possessed, overruled the Supreme Court's holding in *Paul Water*. Staff and various other parties are therefore effectively

1 asking that the Commission overrule an otherwise clear precedent of the Arizona Supreme Court.
2 The Supreme Court, however, has held that the Commission is bound by the decisions of the state
3 appellate courts, even where the Commission believed that the appellate court's decision was
4 erroneous. *Electrical Dist. No. 2 v. Arizona Corp. Comm'n*, 155 Ariz. 252, 745 P.2d 1383 (1987).
5 Thus, the Commission lacks the authority to overrule *Paul Water* itself.

6 Because the PG&E proceeding was consolidated with an A.R.S. § 40-252 hearing, the
7 Recommended Order contains a specific finding of fact that, at all relevant times, APS has
8 provided adequate service at reasonable rates within its service areas. The Recommended Order
9 should also contain a conclusion of law that, because no finding of inadequate service was or can
10 be made, there is no basis for revoking, altering or amending APS' CC&Ns.¹ Alternatively, if the
11 Commission believes that it has the authority to overrule the *Paul Water* decision, and is
12 purporting to overrule that decision in this proceeding, the Recommended Order should be
13 modified to include an express statement to that effect.

14 15 **III. UNIFORM IMPLEMENTATION DATES FOR COMPETITIVE CC&NS**

16 APS believes that rather than certificating a single ESP before other applicants, the
17 Commission should establish a uniform effective date for all CC&N applications filed before
18 January 1, 1999 and that will presumably be approved in the near future. This approach ensures
19 both that customers have a real choice in energy service providers and that no single ESP "corners
20 the market" due to the limited capacity available for Direct Access during the two year phase-in
21 period. Indeed, coordinating the effective date for all competitive CC&Ns is the only way to fairly
22 treat the competitive affiliates of Affected Utilities that, until the approval of the Amended Rules,
23 were under no requirement to file for a new CC&N.

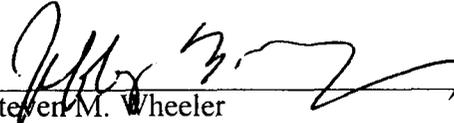
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25 _____
26 ¹ APS has previously indicated it would voluntarily agree to the amendment of its CC&N if the
Commission would concurrently take the necessary steps to establish a fair competitive framework, including
recovery of APS' stranded costs.

1 IV. CONCLUSION.

2 APS thus argues that the Recommended Order should be clarified or amended in three
3 regards. First, the Recommended Order should expressly require that PG&E abide by the same
4 affiliate transaction rules as in-state competitive affiliates, so long as PG&E remains affiliated
5 with a regulated UDC. Second, the Recommended Order should acknowledge that the *Paul Water*
6 decision precludes the Commission from involuntarily revoking, altering or amending the CC&Ns
7 of the Affected Utilities under the findings of fact made in this proceeding and that the
8 Commission lacks the authority to revoke, alter or amend APS' CC&Ns under existing legal
9 precedent. Finally, the Recommended Order should establish a uniform effective date for all
10 competitive CC&Ns filed before January 1, 1999 rather than allowing PG&E alone immediate
11 access to the competitive market.

12 RESPECTFULLY SUBMITTED this 28th day of December, 1998.

13 SNELL & WILMER L.L.P.

14 

15 Steven M. Wheeler
16 Thomas L. Mumaw
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CERTIFICATE OF SERVICE

The original and ten (10) copies of the foregoing document were filed with the Arizona Corporation Commission on this 28th day of December, 1998, and service was completed by mailing or hand-delivering a copy of the foregoing document this 28th day of December, 1998, to all parties of record herein.

Sharon Madden
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