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BEFORE THE ARIZONA CORPORATION

Arizona Corporation Commission

DOCKETED



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CHAIRMAN

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JAN 20 1999

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COMMISSIONER
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AZ CORP COMMISSION

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

COMMENTS
OF THE ARIZONA UTILITY INVESTORS ASSOCIATION
REGARDING UNRESOLVED ISSUES IN RESTRUCTURING
THE ELECTRIC INDUSTRY

Pursuant to the Procedural Order issued by the Chief Hearing Officer on January 6, 1999, the Arizona Utility Investors Association (AUJA) hereby offers its response to the issues raised in the Order. However, before responding to the Hearing Division's request, AUJA feels compelled to react to the Staff's comments which were filed on January 15.

I. Response to Staff Comments

If we take seriously the Staff's laundry list of unresolved issues, we apparently should wipe our memories clean of the last 4 1/2 years, write off the untold millions of dollars spent to date on deregulation and just --- start all over again.

This is a preposterous approach. If we follow the Staff's lead, we will still be arguing about how to begin electric competition in 2010. And if the Staff insists that the slate has been cleaned, they cannot contribute to useful negotiations on the issues. These are children playing at grown-up games and the Commission should exercise parental authority immediately.

For illustrative purposes, AUJA will comment on just two of the 10 areas of unresolved issues cited by the Staff: Market Structure and Stranded Cost.

A) Market Structure

After 4 1/2 years of writing rules to introduce retail competition to the electric industry, the Staff now wants to open a full-scale inquiry into vertical and horizontal market power. Why? What evidence is there that market power is of any concern in Arizona? The fact is that the only market power issues that have been raised in these proceedings were injected into the APS and TEP settlement agreements by the Staff through its insistence on asset transfers precedent to stranded cost recovery.

The inquiry suggested by the Staff's comments would add many months to the schedule for resolving issues and postpone the start of competition to the same degree.

B) Stranded Cost Issues

We are constrained to remind the Commission that this Staff has espoused five different positions on stranded costs in the years that competition has been under consideration. Now, the Staff wants to undertake a generic examination of stranded cost.

Excuse us. We had one of those for four weeks last February. It produced a recommended order that recognized that each company's stranded cost circumstance is unique and may require a unique solution. That opinion was dismembered by Staff amendments which tried to force a single policy of divestiture on every company under ACC jurisdiction.

Nevertheless, each company has filed a stranded cost recovery plan in response to an existing order of the Commission. Most of the parties seem to believe that disagreements over the stranded cost plans can be negotiated. But the Staff apparently wants to start from scratch, as if nothing has happened previously. This approach would block the start of competition by months, if not years, and would probably result in prolonged litigation.

Utility shareholders are being severely damaged by the indecision displayed recently by this Commission. It should be clear to the Commission that the Staff's petulant and irrational attitude will not contribute to an early resolution of the issues blocking competition. We respectfully submit that the public interest requires the Commission to cure this attitude or remove those who are responsible for it from these deliberations.

II. Response to the Hearing Officer's Questions

A) Issues which still need to be resolved

1. Stranded Cost Recovery

Clearly, stranded cost recovery is the largest single issue which must be resolved before the start of competition. AUIA has consistently taken the position that Affected Utilities would violate their legal and fiduciary responsibilities if they relinquished any of their customer base to a competitive market without an approved mechanism in place for recovering stranded costs.

2. Unbundled Tariffs

Approved tariffs are another essential ingredient for any competition to take place. They go hand in hand with stranded cost recovery because the tariffs must include the Competitive Transition Charge (or other stranded cost recovery device) in order to be useful in the marketplace.

3. ESP Certificates

More Electric Service Providers (ESPs) must be certificated in order to have any semblance of a competitive market.

4. Access and Reliability

At this moment there is no practical way for a new ESP to access the delivery system for retail loads except in Salt River Project's control area. The Independent System Administrator (ISA) is not operational. Protocols necessary to assure access and system reliability are not completed. These include settlement provisions for energy imbalances. AUIA still believes that the rules should mandate Scheduling Coordinators and spell out their licensing and operating requirements. There is no approved mechanism for recovering ISA capital and operating costs. Must-run generation is still in limbo.

Although these issues are covered generally in R14-2-1610, this section of the rules is very imperfect. Admittedly, there is a chicken-and-egg problem of split jurisdiction between the ACC and the Federal Energy Regulatory Commission, but there has never been a full airing of these issues above the working group level and that should take place.

5. Solar Portfolio Standard

AUIA continues to believe that the Solar Portfolio Standard (R14-2-1609 et seq.) represents an abuse of the Commission's regulatory authority, and as such, is a legal time bomb waiting to detonate. Even if the Commission would simply rather wait until somebody sues over the larger issue, there are provisions in the rules that are still murky. For example, is the standard really meant to apply to standard offer service after the year 2000 (Subsection C.)? And why are separate renewable resource goals perpetuated in these rules (Subsection H.)?

6. Metering and Meter Reading

It is still unclear what metering and meter reading responsibilities are assigned to the Affected Utilities (UDCs) in the amended rules and how they will be compensated for their investments in some circumstances.

7. Competitive Phases

Obviously, the compliance dates in R14-2-1604 et seq., including the notification of eligible customers, will have to be revised. Furthermore, AUIA continues to believe that the language describing the demand requirements for eligibility in the opening phase of competition will create conflict and undesired results.

8. Affiliate Transactions

At a minimum, the compliance dates in R14-2-1617 et seq. and the requirement for audits beginning in 1999 should be revised to reflect the delay in competition.

9. Disclosure of Information

It is more apparent with each passing day that the information requirements in R14-2-1618, the so-called "placeholder," are unreasonable, excessive and will be of little use to the vast majority of electric customers.

B & C) The order and method of resolution

Issues 1 through 4 are over-arching issues which must be resolved in order to launch competition in a functioning marketplace. They also share the common characteristic that they cannot be resolved primarily by tinkering with the rules.

The major effort should be aimed at stranded cost, with a schedule of roughly parallel hearings (such as that proposed by RUCO and the Attorney General) and a commandment from the bench to the parties to work at reaching settlements. Agreed upon tariffs will flow from stranded cost resolutions. ESP applications should be kept on a track that will have several competitors in place when tariffs are approved. The resolution of these three issues should be coterminous with the start of retail competition.

The same can be said of Issue 4 (Access and Reliability) except for its problem of mixed jurisdiction. Perhaps a one-day hearing or a Special Open Meeting would be appropriate to brief the issues in the formation of the ISA and determine what aspects of the problem should be included in rulemaking.

The balance of the issues we have identified (Issues 5 through 9) are essentially matters for rulemaking. Clearly, the rules will have to be revised to account for the delay in the effective date of competition plus whatever substantive changes may be sought by various parties.

Another set of hearings would be burdensome, at least until stranded cost is largely behind us. And there is another problem. Almost every party's concerns with the rules are documented in previous filings dating back to last July and, once again, in this response. The staff has rejected all of them as inconsequential or unnecessary. Unless the staff is enjoined to consider some of the proposed changes, there is no obvious way to make progress on them.

D) The joint proposal by RUCO and the Attorney General

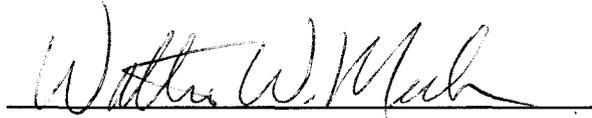
AUIA agrees generally with the approach, but we have three concerns:

1. We object to the concept of interim unbundled tariffs because of the risk of refund among other issues. However, we assume that interim tariffs are no longer an issue given the fact that the rules have been stayed.
2. We believe the schedule is ambitious and we question the order of the proceedings. It might be more productive to take the easier cases (i.e., AEPCO and Citizens) first and the more complicated cases presented by TEP and APS

later in the process. That would provide more time to negotiate settlements and would reduce the probability that the schedule would come apart.

3. It was somewhat unclear in the joint proposal exactly how rulemaking would be carried out and on what schedule. Admittedly, AUIA does not have a more definitive proposal at this time.

Respectfully Submitted, this 20th day of January, 1999.



Walter W. Meek, President

CERTIFICATE OF SERVICE

An original and ten copies of the foregoing
Comments filed this 20th day of January, 1999, with:

Docket Control
Arizona Corporation Commission
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Copies of the foregoing Comments hand delivered
this 20th day of January, 1999, to:

Commissioner James M. Irvin
Commissioner Tony West
Commissioner Carl J. Kunasek
Jerry L. Rudibaugh, Chief Hearing Officer
Paul A. Bullis, Chief Counsel
Ray Williamson, Acting Director, Utilities Division

Copies of the foregoing Comments mailed
this 20th day of January, 1999, to:

Parties of record in the above-captioned docket.



Walter W. Meek