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BEFORE THE ARIZONA CORPORATION COMMISSION

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

MOHAVE ELECTRIC COOPERATIVE, INC.'S AND NAVOPACHE ELECTRIC COOPERATIVE, INC.'S RECOMMENDED RULES CHANGES

Pursuant to the Chief Hearing Officer's January 26, 1999, Procedural Order, Mohave Electric Cooperative, Inc. ("Mohave") and Navopache Electric Cooperative, Inc. ("Navopache") together submit these recommendations for changes to the Retail Electric Competition Rules (A.A.C. R14-2-1601, et. seq.). In accordance with the Procedural Order, specific language additions and deletions are submitted in strikeout and underline format with an explanation provided beneath each proposed change.

RESPECTFULLY SUBMITTED this 29th day of January, 1999

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Arizona Corporation Commission
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ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1601. Definitions
R14-2-1602. Filing of Tariffs by Affected Utilities
R14-2-1603. Certificates of Convenience and Necessity
R14-2-1604. Competitive Phases
R14-2-1605. Competitive Services
R14-2-1606. Services Required To Be Made Available
R14-2-1607. Recovery of Stranded Cost of Affected Utilities
R14-2-1608. System Benefits Charges
R14-2-1609. Solar Portfolio Standard
R14-2-1610. Transmission and Distribution Access
R14-2-1611. In-state Reciprocity
R14-2-1612. Rates
R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements
R14-2-1614. Reporting Requirements
R14-2-1615. Administrative Requirements
R14-2-1616. ~~Separation of Monopoly and Competitive Services~~ Standards of Conduct
R14-2-1617. ~~Affiliate Transactions~~ Books and Records
R14-2-1618. ~~Disclosure of Information~~ Waivers

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION
CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES

ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1601. Definitions

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5. "Competition Transition Charge" (CTC) is a means of recovering Stranded Costs from the customers of competitive services <u>and costs incurred by Affected Utilities to implement the competition rules promulgated by the Commission.</u>

Utilities have incurred costs and will face on-going costs related to the transition to the competitive marketplace. These costs may include premature obsolescence of billing and accounting systems, changes to existing billing and accounting systems, and the potential for excess meter inventories if competitors provide meters and the utility's meters are returned. These costs would not be incurred but for customers selecting competitive services. As a matter of fairness, customers who opt for Standard Offer service should not bear these costs.

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29. "Noncompetitive Services" means distribution service, Standard Offer service transmission and Federal Energy Regulatory Commission-required ancillary services, and these aspects of metering service set forth in R14-2-1613.K. All components of Standard Offer service shall be deemed noncompetitive as long as those components are provided in a bundled transaction pursuant to R14-2-1606(A). <u>Metering, meter ownership, meter reading, billing, collections and information services are deemed to be non-competitive services in the service territories for distribution cooperatives</u>.

The relationship between customers and distribution cooperatives is different for cooperatives than for investor owned utilities. Thus, it is necessary that the relationships and communication links between a cooperative and its members/customers be maintained for membership, voting and other purposes.

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R14-2-1603. Certificates of Convenience and Necessity

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. A Certificate is not required to offer information services, billing and collection services, or self-aggregation. However, aggregators as defined in R14-2-1601 are required to obtain a Certificate of Convenience and Necessity and Self-Aggregators are required to negotiate a Service Acquisition Agreement consistent with subsection G(6). An Affected Utility need not apply for a Certificate of Convenience and Necessity to continue to provide electric service in its service area during the transition period set forth in R14-2-1604. An Affected Utility providing distribution and Standard Offer service after January 1, 2001 need not apply for a Certificate of Convenience and Necessity. ~~All other Affected Utility affiliates created in compliance with R14-2-1616(A) shall be required to apply for appropriate Certificates of Convenience and Necessity~~.

This language is no longer needed due to proposed changes in R14-2-1616.

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I. 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, 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 including relevant tax licenses.
7. The Electric Service Provider shall comply with all disclosure requirements pursuant to R14-2-1618;
8. Failure to comply with any of the above conditions may result in recision of the Electric Service Provider's Certificate of Convenience and Necessity.
9. <u>As a public service corporation, the Electric Service Provider shall be subject to the continuing jurisdiction of the Commission.</u>

The proposed addition assures that all participants in the market place are on a level playing field. ESPs will provide electric services to customers the same as public service corporations. Therefore, they should be under Commission jurisdiction.

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R14-2-1604. Competitive Phases

A. Each Affected Utility shall make available at least 20% of its 1995 system retail peak demand for competitive generation supply on a first-come, first-served basis as further described in this rule. First-come, first-served for the purpose of this rule, shall be determined for non-residential customers by the date and time of an Electric Service Provider's filing of a Direct Access Service Request with the Affected Utility or Utility Distribution Company. The effective date of the Direct Access Service Request must be within 180 days of the filing date of the Direct Access Service Request. Residential customer selection will be determined under approved residential phase-in programs as specified in R14-2-1604.B.4.

1. All Affected Utility customers with non-coincident peak demand load of 1 MW or greater will be eligible for competitive electric services no later than January 1, 1999. Customers meeting this requirement shall be eligible for competitive services until at least 20% of the Affected Utility's 1995 system peak demand is served by competition.
2. During 1999 and 2000, an Affected Utility's customers with single premise non-coincident peak load demands of 40 kW or greater aggregated into a combined load of 1 MW or greater within the Affected Utility's service territory will be eligible for competitive electric services. Self-aggregation is also allowed pursuant to the minimum and combined load demands set forth in this rule. If peak load data are not available, the 40 kW criterion shall be determined to be met if the customer's usage exceeded 16,500 kWh in any month within the last 12 consecutive months. From January 1, 1999, through December 31, 2000, aggregation of new competitive customers will be allowed until such time as at least 20% of the Affected Utility's 1995 system peak demand is served by competitors. At that point all additional aggregated customers must wait until January 1, 2001 to obtain competitive service.
3. ~~Affected Utilities shall notify customers eligible under this subsection of the terms of the subsection no later than October 31, 1998~~.

B. As part of the minimum 20% of 1995 system peak demand set forth in R14-2-1604(A), each Affected Utility shall reserve a residential phase-in program with the following components:

1. A minimum of 1¼% of residential customers as of January 1, 1999 will have access to competitive electric services on January 1, 1999. The number of customers eligible for the residential phase-in program shall increase by an additional 1¼ % 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. Residential customers participating in the residential phase-in program shall be permitted to use load profiling to satisfy the requirements for hourly consumption data; however, they 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. Interested parties will have until September 29, 1998, to comment on any proposal.~~ At a minimum, the residential phase-in program proposal will include

specifics concerning the Affected Utility's proposed:

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 education and information services to be offered;

d. Load Profiling methodology and actual load profiles, if available; and

e. Method for calculation of reserved load.

5. Each Affected Utility shall file quarterly residential phase-in program reports within 45 days of the end of each quarter. The 1st such report shall be due within 45 days of the quarter ending March 31, 1999. The final report due under this rule shall be due within 45 days of the quarter ending December 31, 2002. As a minimum, these quarterly reports shall include:

a. The number of customers and the load currently enrolled in residential phase-in program by energy service provider;

b. The number of customers currently on the waiting list;

c. A description and examples of all customer education programs and other information services including the goals of the education program and a discussion of the effectiveness of the programs; and

d. An overview of comments and survey results from participating residential customers.

C. ~~Each Affected Utility shall file a report by September 15, 1998, detailing possible mechanisms to provide benefits, such as rate reductions of 3% - 5%, to all Standard Offer customers.~~

D. All customers shall be eligible to obtain competitive electric services no later than January 1, 2001. ~~, at which time all customers shall be permitted to aggregate, including aggregation across service territories~~.

The proposed change in 1604(D) restores the original language of the competition rules. Issues such as cross service territory aggregation are addressed in implementation plans such as the DASR process.

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R14-2-1606. Services Required To Be Made Available

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D. By the date indicated in R14-2-1602, each Affected Utility shall file Unbundled Service tariffs to provide the services listed below to the extent allowed by these rules to all eligible purchasers on a nondiscriminatory basis. <u>These tariffs shall be filed as Applications for Offering New Services.</u> Other entities, <u>including all Energy Service Providers,</u> seeking to provide any of these services must also file tariffs consistent with these rules:

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

The intent of these changes is to identify the difference between unbundled service tariffs and standard offer tariffs. The Commission Staff has insisted that there be a strong nexus between unbundled and Standard Offer service tariffs. However, unbundled noncompetitive services need not be priced as if they were bundled, packaged services under traditional regulation with cross subsidies.

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H. Rates for Unbundled Services

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

The proposed change clarifies the difference between rates for monopoly services and competitive services. Rates for competitive services should be determined in the marketplace.

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

A. The Affected Utilities shall take every 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. The Affected Utilities shall file estimates of unmitigated Stranded Cost together with supporting data. ~~Such estimates shall be fully supported by analyses and by records of market transactions undertaken by willing buyers and willing sellers.~~

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I. The Commission may order regular revisions to estimates of the magnitude of Stranded Cost, based upon established facts.

The proposed changes are intended to simplify the language pertaining to the calculation of stranded costs.

R14-2-1608. System Benefits Charges

~~A.~~ By the date indicated in R14-2-1602, each Affected Utility or Utility Distribution Company 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 or Utility Distribution Companies' service area who participate in the competitive market. Affected Utilities or Utility Distribution Companies shall file for review of the Systems Benefits Charge every 3 years. The amount collected annually through the System Benefits charge shall be sufficient to fund the Affected Utilities' or Utility Distribution Companies' Commission-approved low income, demand side management, market transformation, environmental, renewables, long-term public benefit research and development, and nuclear fuel disposal and nuclear power plant decommissioning programs in effect from time to time. ~~Now, the Commission will approve a solar water heater rebate program: $200,000 to be allocated proportionally among the state's Utility Distribution Companies in 1999, $400,000 in 2000, $600,000 in 2001, $800,000 in 2002, and $1 million in 2003; the rebate will not be more than $500 per system for Commission staff-approved solar water heaters. After 2003, future Commissions may review this program for efficacy.~~

The proposed change eliminates a program that is not related to electric utility competition. If a solar water heater program is in the interest of Arizona, it should be addressed in other forums.

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R14-2-1609. Solar Portfolio Standard

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C. The solar portfolio requirement shall only apply to competitive retail electricity. ~~in the years 1999 and 2000 and shall apply to all retail electricity in the years 2001 and thereafter~~. The solar portfolio requirement shall not apply to sales under Standard Offer Service tariffs.

Application of solar technologies is appropriate in the competitive marketplace where customers can be given choice in power suppliers. If customers elect Standard Offer service,

they should be responsible for the costs associated with their utility service. A customer who desires to have a portion of his or her power supply come from photovoltaic or other solar resources can exercise that choice in the competitive marketplace.

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R14-2-1610. Transmission and Distribution Access

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C. The Commission believes that an Independent Scheduling Administrator is necessary in order to provide non-discriminatory retail access and to facilitate a robust and efficient electricity market. Therefore, those Affected Utilities that own or operate Arizona transmission facilities shall file with the Federal Energy Regulatory Commission by October 31, 1998 for approval of an Independent Scheduling Administrator having the following characteristics:

1. The Independent Scheduling Administrator shall calculate Available Transmission Capacity (ATC) for Arizona transmission facilities that belong to the Affected Utilities or other Independent Scheduling Administrator participants, and shall develop and operate an overarching statewide OASIS.
2. The Independent Scheduling Administrator 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, available transfer capabilities, and Must-Run Generating Units, provided that such protocols, with respect to Must-Run Generating Units, shall be in accordance with and completely compatible with FERC regulation of such units.

The proposed change recognizes FERC jurisdiction regarding must run generation.

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R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements

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K. 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 using EDI formats to meter reading data to other Electric Service Providers serving that same consumer when

authorized by the consumer. Utility Distribution Companies shall make available to the Customer or Electric Service Provider all metering information and may charge a fee for that service. The charge or fee shall reflect the cost of providing such information.

The proposed change requires that the UDC provide data and allow for recovery of costs associated with collecting and distributing the data.

2. Any person or entity 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. Each competitive customer shall be assigned a Universal Node Identifier for each service delivery point by the Affected Utility or the Utility Distribution Company whose distribution system serves the customer.
4. All competitive metered and billing data shall be translated into consistent, statewide Electronic Data Interchange (EDI) formats based on standards approved by the Utility Industry Group (UIG) that can be used by the Affected Utility or the Utility Distribution Company and the Electric Service Provider.
5. An Electronic Data Interchange Format shall be used for all data exchange transactions from the Meter Reading Service Provider to the Electric Service Provider, Utility Distribution Company, and Schedule Coordinator. This data will be transferred via the Internet using a secure sockets layer or other secure electronic media.
6. Minimum metering requirements for competitive customers over 20 kW, or 100,000 kWh annually, should consist of hourly consumption measurement meters or meter systems.
7. Competitive customers with hourly loads of 20 kW (or 100,000 kWh annually) or less, will be permitted to use Load Profiling to satisfy the requirements for hourly consumption data.
8. Meter ownership will be limited to the Affected Utility, Utility Distribution Company, and the Electric Service Provider or their representative, or the customer, who obtains the meter from the Affected Utility, or Utility Distribution Company or an Electric Service Provider. When the Affected Utility or Utility Distribution Company is a distribution cooperative, meter ownership must reside with the distribution cooperative.

Distribution cooperatives must maintain a nexus with their members and the proposed change helps to maintain that connection. See also the explanation for the proposed change to R14-2-1601(29).

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O. Unbundled Billing Elements. All customer bills ~~after January 1, 1999~~ will list, at a minimum, the ~~following~~ billing cost elements shown below. In cases in which power supplies (including generation, transmission and ancillary services) are obtained on a

bundled basis, those costs can be shown as a bundled cost.

1. Electricity Costs:
   a. Generation,
   b. Competition Transition Charge, and
   c. Fuel or purchased power adjustor, if applicable
2. Delivery costs:
   a. Distribution services,
   b. Transmission services, and
   c. Ancillary services
3. Other Costs:
   a. Metering Service,
   b. Meter Reading Service,
   c. Billing and collection, and
   d. System Benefits charge
   e.

When service is purchased on a bundled basis, neither the UDC nor ESP can provide the data required by the rules as currently written. For example, the XYZ Company may purchase a package of generation, transmission, and ancillary services from the market and have the energy delivered to the UDC's system. However, the XYZ Company does not know the costs of each component of the package it purchased. Such arrangements are likely to be the norm for wholesale purchases of energy, ancillary services, and transmission services.

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The following changes regarding R14-2-1616, 1617, 1618, and 1619 constitute a complete replacement of old R14-2-1616 and 1617.

~~**R14-2-1616. Separation of Monopoly and Competitive Services**~~

~~A. All competitive generation assets and competitive services shall be separated from an Affected Utility prior to January 1, 2001. Such separation shall either be to an unaffiliated party or to a separate corporate affiliate or affiliates. If an Affected Utility chooses to transfer its competitive generation assets or competitive services to a competitive electric affiliate, such transfer shall be at a value determined by the Commission to be fair and reasonable.~~

~~B. Beginning January 1, 1999, an Affected Utility or Utility Distribution Company shall not provide competitive services as defined herein, except as otherwise authorized by these rules or by the Commission. However, this rule does not preclude an Affected Utility's or Utility Distribution Company's affiliate from providing competitive services. Nor does this rule preclude an Affected Utility or Utility Distribution Company from billing its own customers for distribution service, or from providing billing services to Electric Service Providers in conjunction with its own billing or from providing meters for Load Profiled residential customers. Nor does this rule require an Affected Utility or Utility Distribution Company to separate such assets or services utilized in these circumstances. Affected~~

~~Utilities and Utility Distribution Companies shall provide, if requested by an Electric Service Provider or customer, metering, meter reading, billing, and collection services within their service territories at tariffed rates to customers that do not have access to these services during the years 1999 and 2000, subject to the following limitations. The Affected Utilities and Utility Distribution Companies shall be allowed to continue to provide metering and meter reading services to competitive customers within their service territories at tariffed rates until such time as 2 or more competitive Electric Service Providers are offering such services to a particular customer class. When 2 competitive Electric Service Providers are providing such services to a particular customer class, the Affected Utilities and Utility Distribution Companies will no longer be allowed to offer the service to new competitive customers in that customer class, but may continue to offer the service through December 31, 2000, to the existing competitive customers signed up prior to the commencement of service by the 2 competitive Electric Service Providers..~~

~~C. An Electric Distribution Cooperative is not subject to the provisions of R14-2-1616 except if it offers competitive electric services outside of the service territory it had as of the effective date of these rules.~~

~~D. To meet the solar portfolio requirement in R14-2-1609, the Utility Distribution Company may purchase, install, and operate the solar electric systems or contract with an affiliate to meet the solar portfolio requirement.~~

R14-2-1616. Standards of Conduct

A. Nondiscriminatory Service Availability

All Electric Service Providers, Affected Utilities, and Utility Distribution Companies shall adhere to the following requirements:

1. All customers shall be treated in a fair and impartial manner.
2. No Electric Service Provider, Affected Utility, or Utility Distribution Company shall require a customer to purchase any Competitive Service from it or any affiliated company.
3. Electric Service Providers, Affected Utilities, and Utility Distribution Companies shall process all requests for Competitive and Noncompetitive Services impartially and expeditiously.
4. Utility Distribution Companies and Affected Utilities shall not give priority for Noncompetitive Services to customers who obtain Competitive Services from the Utility Distribution Company, the Affected Utility, or its affiliates.

B. **Fair Pricing of Competitive Services**

1. Competitive services shall be provided in a nondiscriminatory manner as provided in R14-2-1616A.
2. Every Electric Service Provider shall have the opportunity to meet the market price for competitive services.
3. The price of any competitive service shall be such that the expected revenues from the customer shall be sufficient to recover the marginal cost of providing that service, including the cost of any new facilities needed to serve the customer, during the term of the contract. However, to meet this standard, it is not necessary that the

price charged to a particular customer be sufficient to recover marginal cost at every hour.

4. Each Electric Service Provider shall set its price for a Competitive Service unilaterally and without consulting with any other seller of similar services.
5. Competitive Services offered by an Affected Utility, Utility Distribution Company, or their affiliates, if any, shall not be subsidized by any rate or charge for Noncompetitive Services.

C. Fair Pricing of and Access to Noncompetitive Services

1. Noncompetitive Services shall be provided in a nondiscriminatory manner as provided in R14-2-1616A.
2. An Electric Service Provider which is a Utility Distribution Company, Affected Utility, an affiliate of a Utility Distribution Company, or affiliate of an Affected Utility shall obtain Noncompetitive Services at the same rates that the Utility Distribution Company or Affected Utility charges to other Electric Service Providers or customers for such services and under the same terms and conditions that it imposes on other Electric Service Providers or customers for such services.
3. If a Utility Distribution Company or Affected Utility offers a discount or other promotion on a Noncompetitive Service provided to a customer, the discount or promotion shall be irrespective of whether the Utility Distribution Company, Affected Utility or its affiliates provides any Competitive Service to the customer.
4. Neither a Utility Distribution Company or Affected Utility nor its employees engaged in providing any Noncompetitive Services shall disclose to any provider of Competitive Services, including affiliates, any information regarding Noncompetitive Services that is not otherwise publicly available. If such nonpublic information is disclosed, that information shall be made public immediately.
5. An Affected Utility or Utility Distribution Company shall not provide non-public information on customers or customer requests to any provider of Competitive Services, including affiliates, without the customer's permission.

D. Interactions with Other Electric Service Providers

1. Neither an Electric Service Provider nor its employees shall agree with any other Electric Service Provider to:
   a) Restrict or curtail in any way the offering of Competitive Services in any area.
   b) Set the price of any competitively offered service.
   c) Set the market share of any seller of Competitive Services.
   d) Boycott or refuse to deal with a third company.
2. No employee of a Utility Distribution Company or Affected Utility shall communicate with sellers of Competitive Services, including affiliated Electric Service Providers, about the pricing or marketing of Competitive Services to specific customers. However, this prohibition shall not apply to distribution cooperatives responding to requests by their members or prospective members.
3. Electric Service Providers shall not obtain competitive price information from a competitor nor shall they verify the prices of Competitive Services with a competitor.

E. **Standards Manual**

1. Each Electric Service Provider, Affected Utility and Utility Distribution Company shall prepare a manual for its employees indicating proper conduct consistent with these rules and shall train its employees regarding standards of conduct.
2. Each Affected Utility and Utility Distribution Company shall provide the Director, Utilities Division with a copy of its manual on standards of conduct within 180 days of the start of competition, and shall timely provide the Director, Utilities Division with updates of the manual as it is revised.
3. Each Electric Service Provider shall provide the Director, Utilities Division with its manual of standards of conduct within 180 days of the later of receiving its Certificate of Convenience and Necessity or the start of sales in Arizona and shall timely provide the Director, Utilities Division with updates of the manual as it is revised.

~~**R14-2-1617. Affiliate Transactions**~~

~~A. Separation~~

~~An Affected Utility or Utility Distribution Company and its affiliates shall operate as separate corporate entities. Books and records shall be kept separate, in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP). The books and records of any Electric Service Provider that is an affiliate of an Affected Utility or Utility Distribution Company shall be open for examination by the Commission and its staff consistent with the provisions set forth in R14-2-1614. All proprietary information shall remain confidential.~~

~~1. An Affected Utility or Utility Distribution Company shall not share office space, equipment, services, and systems with its competitive electric affiliates, nor access any computer or information systems of one another, except to the extent appropriate to perform shared corporate support functions permitted under subsection (A)(2). An Affected Utility or Utility Distribution Company shall not share office space, equipment, services, and systems with its other affiliates without full compensation in accordance with subsection (A)(7).~~

~~2. An Affected Utility or Utility Distribution Company, its parent holding company, or a separate affiliate created solely for the purpose of corporate support functions, may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with all applicable Commission pricing and reporting requirements. An Affected Utility or Utility Distribution Company shall not use shared corporate support functions as a means to transfer confidential information, allow preferential treatment, or create significant opportunities for cross-subsidization of its affiliates, and shall provide mechanisms and safeguards against such activity in its compliance plan.~~

~~3. An affiliate of an Affected Utility or Utility Distribution Company shall not trade, promote, or advertise its affiliation with the Affected Utility or Utility Distribution Company, nor use or make use of the Affected Utility's name or logo in any material circulated by the affiliate, unless it discloses in plain legible or audible~~

~~language, on the first page or at the first instance the Affected Utility or Utility Distribution Company name or logo appears, that:~~

~~a. The affiliate is not the same company as the Affected Utility or Utility Distribution Company, and~~

~~b. Customers do not have to buy the affiliate product in order to continue to receive quality regulated services from the Affected Utility or Utility Distribution Company.~~

~~4. An Affected Utility or Utility Distribution Company shall not offer or provide to its affiliates advertising space in any customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.~~

~~5. An Affected Utility or Utility Distribution Company shall not participate in joint advertising, marketing or sales with its affiliates. Any joint communication and correspondence with an existing customer by an Affected Utility or Utility Distribution Company and its affiliate shall be limited to consolidated billing, when applicable, and in accordance with these rules.~~

~~6. Except as provided in subsection A(2), an Affected Utility or Utility Distribution Company and its affiliate shall not jointly employ the same employees. This rule applies to Board of Directors and corporate officers. However, any board member or corporate officer of a holding company may also serve in the same capacity with the Affected Utility or Utility Distribution Company, or its affiliate, but not both. Where the Affected Utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for its affiliates, the prohibition outlined in this section shall only apply to affiliates that operate within Arizona.~~

~~7. Transfer of Goods and Services: To the extent that these rules do not prohibit transfer of goods and services between an Affected Utility or Utility Distribution Company and its affiliates, all such transfers shall be subject to the following price provisions:~~

~~a. Goods and services provided by an Affected Utility or Utility Distribution Company to an affiliate shall be transferred at the price and under the terms and conditions specified in its tariff. If the goods or service to be transferred is a non-tariffed item, the transfer price shall be the higher of fully allocated cost or the market price. Transfers from an affiliate to its affiliated Utility Distribution Company shall be priced at the lower of fully allocated cost or fair market value.~~

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

~~8. No Cross-subsidization: A competitive affiliate of an Affected Utility or Utility Distribution Company shall not be subsidized by any rate or charge for any noncompetitive service, and shall not be provided access to confidential utility information.~~

~~B. Access to Information~~

~~As a general rule, an Affected Utility, Utility Distribution Company or Electric Service Provider shall provide customer information to its affiliates and nonaffiliates 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, Utility Distribution Company or Electric Service Provider to its affiliates and all other service providers on the same terms and conditions.~~

~~C. An Affected Utility or Utility Distribution Company shall adhere to the following guidelines:~~

~~1. Any list of Electric Service Providers provided by an Affected Utility or Utility Distribution Company to its customers which includes or identifies the Affected Utility's or Utility Distribution Company's competitive electric affiliates must include or identify non-affiliated entities included on the list of those Electric Service Providers authorized by the Commission to provide service within the Affected Utility's or Utility Distribution Company's certificated area. The Commission shall maintain an updated list of such Electric Service Providers and make that list available to Affected Utilities or Utility Distribution Companies at no cost.~~

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

~~3. Except as otherwise provided in these rules, an Affected Utility or Utility Distribution Company shall not offer or provide customers advice, which includes promoting, marketing or selling, about its affiliates or other service providers.~~

~~4. An Affected Utility or Utility Distribution Company shall maintain contemporaneous records documenting all tariffed and nontariffed 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 3 years, or longer if required by this Commission or another governmental agency.~~

~~D. Nondiscrimination~~

~~An Affected Utility, Utility Distribution Company, or their affiliates shall not represent that, as a result of the affiliation, customers of such affiliates will receive any treatment different from that provided to other, non-affiliated entities or their customers. An Affected Utility, Utility Distribution Company, or their affiliates shall not provide their affiliates, or customers of their affiliates, any preference over non-affiliated suppliers or their customers in the provision of services. For example:~~

~~1. Except when made generally available by an Affected Utility, Utility Distribution Company or their affiliates, through an open competitive bidding process, if the Affected Utility, Utility Distribution Company or their affiliates 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 their affiliates are involved, the entity shall contemporaneously make such discount or waiver available to all.~~

~~2. If a tariff provision allows for discretion in its application, an Affected Utility or Utility Distribution Company shall apply that provision equally among its affiliates and all other market participants and their respective customers.~~

~~3. Requests from affiliates and non-affiliated entities and their customers for services provided by the Affected Utility or Utility Distribution Company shall be processed on a nondiscriminatory basis.~~

~~4. An Affected Utility or Utility Distribution Company 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. In the course of business development and customer relations, except as otherwise provided in these rules, an Affected Utility or Utility Distribution Company shall refrain from:~~

~~a. Providing leads to its affiliates;~~

~~b. Soliciting business on behalf of affiliates;~~

~~c. Acquiring information on behalf of, or provide information to, its affiliates;~~

~~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.~~

~~E. Compliance Plans~~

~~No later than December 31, 1998, each Affected Utility or Utility Distribution Company shall file a compliance plan demonstrating 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 Director, Utilities Division and shall be in effect until a determination is made regarding its compliance under these rules. The compliance plan shall thereafter be submitted annually to reflect any material changes. An Affected Utility or Utility Distribution Company shall have a performance audit prepared by an independent auditor in the 1st quarter after the end of each calendar year to examine compliance with the rules set forth herein, starting no later than the calendar year 1999, and every year thereafter until December 31, 2002. Such audits shall be filed with the Director, Utilities Division. After December 31, 2002 the Director, Utilities Division may request a Utility Distribution Company to conduct such an audit.~~

~~F. Waivers~~

Similar to old 1617A

R14-2-1617. Books and Records

An Affected Utility or Utility Distribution Company and its affiliates shall keep books and records separately for Competitive and Noncompetitive Services in accordance with applicable Uniform System of Accounts and Generally Accepted Accounting Procedures. The books and records of any Affected Utility or Utility Distribution Company, and its affiliates shall be open to inspection by the Commission provided that proprietary information shall remain confidential.

This is old 1617F

R14-2-1618. Waivers

A. Any affected entity may petition the Commission for a waiver by filing a verified application for waiver setting forth with specificity the circumstances whereby the public interest justifies a waiver from all or part of the provisions of this rule.

B. The Commission may grant such application upon a finding that a waiver is in the public interest.

The existing rules are needlessly elaborate and in many cases (e.g., R14-2-1616B) are incomprehensible. In addition, the existing rules ignore potential unfair practices. That is, the existing rules do not attempt to deal with harm but rather partially attempt to deal with organizational structures which might be used in connection with practices that harm

consumers. Consequently, consumers could still be harmed but offenders will have complied with Byzantine rules.

The proposed changes provide a basis for fair competition focused on inappropriate behavior. In particular, they address unfair use of information, predatory pricing, unfair tying arrangements, inappropriate cross subsidization of competitive and noncompetitive services, price squeezes, unfair restriction of access to essential noncompetitive services and facilities, inappropriate territorial division, and collusion and price fixing. If harms occur through inappropriate behavior, such as discriminatory access to monopoly facilities or predatory pricing, the Commission could revoke a company's CC&N.

The proposed language for R14-2-1616(D)(2) allows distribution cooperatives to provide information about competitive services to customers because the customers are members/owners of the cooperatives and they often seek advice from their employees (staff of the cooperative) regarding market information.

~~**R14-2-1618 Disclosure of Information**~~

~~A. There are efforts under the auspices of the Western Conference of Public Service Commissioners to develop a tracking mechanism as to the source of electrons. To facilitate customer choice, the Commission intends to participate in developing this tracking mechanism and a side-by-side comparison for retail customers on price, price variability, fuel mix, and emissions of electricity offered for sale in Arizona and the West. Until this is accomplished, R14-2-1618 is a placeholder.~~

~~B. Each Load-Serving Entity shall prepare a consumer information label that sets forth the following information for customers with a demand of less than 1 MW:~~

~~1. Price to be charged for generation services,~~
~~2. Price variability information,~~
~~3. Customer service information,~~
~~4. Composition of resource portfolio,~~
~~5. Fuel mix characteristics of the resource portfolio,~~
~~6. Emissions characteristics of the resource portfolio,~~
~~7. Time period to which the reported information applies.~~

~~C. The Director, Utilities Division shall develop the format and reporting requirements for the consumer information label to ensure that the information required by subsection (A) is appropriately and accurately reported and to ensure that customers can use the labels for comparisons among Load-Serving Entities. The format developed by the Director, Utilities Division shall be used by each Load-Serving Entity.~~

~~D. Each Load-Serving Entity shall include the information disclosure label in a prominent position in all written marketing materials, specifically target to Arizona. When a Load-Serving Entity advertises in non-print media, or in written materials not specifically target to Arizona, the marketing materials shall indicate that the Load-Serving Entity shall provide the consumer information label to the public upon request.~~

~~E. Each Load-Serving Entity shall prepare an annual disclosure report that aggregates the resource portfolios of the Load-Serving Entity and its affiliates.~~

~~F. Each Load-Serving Entity shall prepare a statement of its terms of service that sets forth the following information:~~

~~1. Actual pricing structure or rate design according to which the customer with a load of less than 1 MW will be billed, including an explanation of price variability and price level adjustments that may cause the price to vary;~~

~~2. Length and description of the applicable contract and provisions and conditions for early termination by either party;~~

~~3. Due date of bills and consequences of late payment;~~

~~4. Conditions under which a credit agency is contacted;~~

~~5. Deposit requirements and interest on deposits;~~

~~6. Limits on warranties and damages;~~

~~7. All charges, fees, and penalties;~~

~~8. Information on consumer rights pertaining to estimated bills, 3rd party billing, deferred payments, recission of supplier switches within 3 days of receipt of confirmation;~~

~~9. A toll-free telephone number for service complaints;~~

~~10. Low income rate eligibility;~~

~~11. Provisions for default service;~~

~~12. Applicable provisions of state utility laws; and~~

~~13. Method whereby customers will be notified of changes to the terms of service.~~

~~G. The consumer information label, the disclosure report, and the terms of service shall be distributed in accordance with the following requirements:~~

~~1. Prior to the initiation of service for any retail customer,~~

~~2. Prior to processing written authorization from a retail customer with a load of less than 1 MW to change Electric Service Providers,~~

~~3. To any person upon request,~~

~~4. Made a part of the annual report required to be filed with the Commission pursuant to law.~~

~~5. The information described in this subsection shall be posted on any electronic information medium of the Load-Serving Entities.~~

~~H. Failure to comply with the rules on information disclosure or dissemination of inaccurate information may result in suspension or revocation of certification or other penalties as determined by the Commission.~~

~~I. The Commission may establish a consumer information advisory panel to review the effectiveness of the provisions of this Section and to make recommendations for changes in the rules.~~

The existing section 1618 imposes a needlessly cumbersome and expensive information requirement that is of little or no value to consumers.