

JIM IRVIN
COMMISSIONER-CHAIRMAN
TONY WEST
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER



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OPEN MEETING ITEM

STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION RECEIVED
AZ CORP COMMISSION

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DOCUMENT CONTROL

DATE: JANUARY 4, 1999

DOCKET NO.: RE-00000C-94-0165

TO ALL PARTIES:

Enclosed please find the recommendation of Commissioner Tony West. The recommendation has been filed in the form of an Order on:

ELECTRIC COMPETITION RULES
(REHEARING/STAY/WAIVER)

For more information, you may contact Docket Control at (602)542-3477.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
COMMISSIONER-CHAIRMAN
3 TONY WEST
COMMISSIONER
4 CARL J. KUNASEK
COMMISSIONER

5
6 IN THE MATTER OF COMPETITION IN THE
PROVISIONS OF ELECTRIC SERVICES
7 THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

8 REHEARING OF DECISION NO. 61272, STAY
9 OF THE ELECTRIC COMPETITION RULES
AND A TEMPORARY WAIVER FROM
10 COMPLIANCE WITH THE ELECTRIC
COMPETITION RULES.

DECISION NO. _____

ORDER

11 Open Meeting
12 January 5, 1999
Phoenix, Arizona

13 **BY THE COMMISSION:**

14 **PROCEDURAL HISTORY**

15 On December 26, 1996, the Arizona Corporation Commission ("Commission") issued
16 Decision No. 59943 which approved new Rules A.A.C. R14-2-1601 through R14-2-1616, the Retail
17 Electric Competition Rules ("Rules"). The Rules established a policy framework for the transition
18 from a non-competitive to a competitive market environment for electric monopolies and customers
19 in the State of Arizona. Decision No. 59943 recognized complex problems regarding the
20 recoverability of stranded investments, intra-state and inter-state reciprocity, the status of new
21 Certificates of Convenience and Necessity ("CC&Ns") and other issues. The Commission further
22 stated:

23 (W)e conclude that these gaps, to the extent that they exist, can be filled in later
24 workshops, working groups, subsequent evidentiary hearings, and perhaps subsequent
25 rulemaking proceedings; while competition is approaching rapidly, the transition to
26 competition will allow time to address these issues and resolve them in a timely
fashion.

27 Eight electric utility companies and the Residential Utility Consumer Office appealed the Rules by
28 suing the Commission in Maricopa County Superior Court. These lawsuits were consolidated,

1 effective January 15, 1998.

2 On June 22, 1998 the Commission issued Decision No. 60977, the Stranded Cost Order,
3 which required each Affected Utility to file a plan for stranded cost recovery. The Decision provided
4 Affected Utilities two options: Divestiture/Auction Methodology or Transition Revenues
5 Methodology. Divestiture requires the Affected Utility to determine stranded costs by divesting all
6 generation assets. The Transition Revenues Methodology is designed to provide the Affected Utility
7 "sufficient revenues necessary to maintain financial integrity."

8 On August 10, 1998 the Commission issued Decision No. 61071 which adopted Emergency
9 Rules for Electric Competition. The Commission stated in part:

10 The safe, efficient and reliable provision of electric service is clothed with the public
11 interest, and the details resolved by the proposed rules further those interests. Due to
12 the need to adhere to the originally approved deadline of January 1, 1999 and to
13 enable all stakeholders to make necessary preparations for this date, the proposed rules
and revisions are necessary as an emergency measure.

14 In addition, Decision No. 61071 ordered the Hearing Division to schedule oral proceedings on
15 the Amended Rules. Pursuant to our August 11, 1998 Procedural Order, interested parties, including
16 the Utilities Division Staff ("Staff") of the Commission, could file written comments up through
17 October 8, 1998.

18 On November 24, 1998, in contravention of the August 11, 1998 Procedural Order, Staff filed
19 additional comments in which Staff proposed additional changes to the Amended Rules.

20 On November 25, 1998, the Commission issued Decision No. 61257, which ordered the
21 Hearing Division to issue on or before December 4, 1998 "a recommended order approving final
22 amendments to the Retail Electric Competition Rules." It was further ordered that the normal ten-day
23 time frame for exceptions to the Proposed Order was to be reduced to a five-day period.

24 On November 25, 1998, the Commission issued Decision No. 61259 which established a
25 procedural schedule for evidentiary hearings of the Staff Settlement Proposals with Arizona Public
26 Service Company ("APS") and Tucson Electric Power Company ("TEP"), Docket Numbers: E-
27 01345A-98-0473, E-01345A-97-0773, E-01933A-98-0471, E-01933A-97-0772 and RE-00000C-94-
28 0165.

1 The Commission required hearings to begin December 3, 1998 at 8:00 a.m. and "each day,
2 including Saturday, December 5, 1998, and shall continue until 8:00 p.m. each day, or such other
3 time as is appropriate under the circumstances." The Commission also required that "all parties other
4 than Staff, APS or TEP shall file testimony, comments, disagreements regarding the Proposed
5 Agreements by noon on November 30, 1998."

6 On November 30, 1998, the Arizona Attorney General's Office, in association with numerous
7 other parties, filed a Verified Petition for Special Action and Writ of Mandamus with the Arizona
8 Supreme Court regarding the Commission's November 25, 1998 Procedural Order, Decision No.
9 61259. The Attorney General sought a Stay of the Commission's consideration of the Staff
10 Settlement proposals with APS and TEP.

11 The Attorney General argued that the Supreme Court should Stay the proceeding of the
12 Commission because the schedule was denying the interested parties their constitutionally protected
13 right to due process.

14 The Attorney General asserted that the Court should take jurisdiction due in part to:

15 (I)n a matter of days, the Commission is likely to approve the Agreements that would
16 restructure Arizona's electric energy markets upon a forced, inadequate and truncated
17 process that involves *ex parte* contacts with a Commissioner and which would deny
18 the State and other energy consumer petitioners their right to a full and fair hearing.

19 On December 1, 1998, Vice Chief Justice Charles E. Jones granted a Motion for Immediate
20 Stay of the Procedural Order. Justice Jones wrote in part:

21 The Court has reviewed these agreements and finds them lengthy and complex.
22 Petitioners received notice of the hearing date four business days prior to the hearing
23 which will involve detailed evidence on comprehensive issues. This is plainly
24 insufficient under applicable standards. To consider adequately the interests of
25 taxpayers and rate payers and to balance those interests carefully against the interests
26 of investors in private utility companies, the Commission must allow sufficient time to
27 prepare, evaluate, and present the evidence.

28 On December 9, 1998, the Commission Staff filed a notice with the Supreme Court that the
Staff Settlement Proposals had been withdrawn from Commission consideration.

On December 11, 1998, the Commission issued Decision No. 61272, which adopted
Amendments including all additional changes to the Rules proposed by Staff on November 24, 1998.

1 On December 14, 1998, the Commission issued Decision Nos. 61282, 61283, and 61284
2 which approved the unbundled and standard offer service tariffs for Graham County Electric
3 Cooperative, Navopache Electric Cooperative and Trico Electric Cooperative.

4 On December 23, 1998, the Commission issued Decision No. 61302 which granted
5 Navopache Electric Cooperative's application for amendment of its CC&N; a variance from the
6 Rules; and Eastern Competitive Solutions' application for a Certificate of Convenience and Necessity
7 to provide retail electric services in Navopache's service territory.

8 On December 31, 1998, prior to 5:00 p.m., Parties to the Rules Docket¹ timely filed
9 Applications for Rehearing of Decision No. 61272. The Parties argue in part that the Amended Rules
10 are fatally flawed with ambiguities and inconsistencies, exceed the constitutional and statutory
11 authority of the Commission and cannot be practically implemented at this time. The Parties argue
12 the Commission has yet to resolve issues critical to creating a transition to a competitive market.
13 These issues include but are not limited to: market structure, federal-state jurisdiction, system
14 reliability, must run generation, unbundled tariffs for the three largest investor-owned utilities and
15 stranded cost recovery.

16 The Commission held an Open Meeting on December 31, 1998, at 5:30 p.m. after the close of
17 normal business hours, to consider Requests for Reconsideration of Decision No. 61272, the
18 amended Rules.

19 DISCUSSION

20 Under the Arizona Constitution, the Commission retains the primary role of developing and
21 executing public policy for public service corporations. This duty requires the Commission to act in
22 a lawful and deliberative manner. It is essential to our form of government that all parties before the
23 Commission be provided adequate notice and the proper forum to voice their support or concerns
24

25
26 ¹ Trico Electric Cooperative, Inc., ASARCO Incorporated, Cyprus Climax Metals Company, Enron Corp.,
27 Arizonans for Electric Choice and Competition, the Residential Utility Consumer Office, Tucson Electric Power
28 Company, Arizona Public Service Company, Arizona Transmission Dependent Utility Group, Sulphur Springs Valley
Electric Cooperative, Inc., Graham County Electric Cooperative, Inc., Duncan Valley Electric Cooperative, Inc. and
Arizona Electric Power Cooperative, Inc.

1 with public policy decisions that will directly affect our citizens, the consumers and stakeholders in
2 the industries we regulate.

3 The Commission enacted the initial Rules on December 26, 1996, and specifically assured all
4 parties that "while competition is approaching rapidly, the transition to competition will allow time to
5 address these issues and resolve them in a timely fashion." The Commission originally proposed that
6 electric competition was to begin on January 1, 1999. Unfortunately, the Commission has failed to
7 adequately address the issues necessary to begin implementing competition in the electric industry in
8 a timely or consistent manner. Consumers and stakeholders should not bear additional liabilities
9 from the Commission's actions in electric competition.

10 Therefore, in order to take action consistent with the public interest and due process, the
11 Commission must stay the Rules, grant all Affected Utilities a waiver from compliance with such
12 Rules and related Decisions, and grant a Rehearing of Decision No. 61272.

13 Furthermore, the Commission should establish a Procedural Schedule that sets guidelines with
14 full public and due process, for a program to bring electric competition to Arizona.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

- 19 1. On December 26, 1996, in Decision No. 59943, the Commission enacted A.A.C. R14-
20 2-1601 through R14-2-1616, the Rules. The Rules established a schedule to resolve issues and
21 phase-in retail electric competition beginning January 1, 1999.
- 22 2. On June 22, 1998, the Commission adopted Decision No. 60977, the Stranded Cost
23 Order, in association with the Rules.
- 24 3. On August 10, 1998, in Decision No. 61071, the Commission adopted certain
25 modifications to the Retail Electric Competition Rules.
- 26 4. In addition, Decision No. 61071 ordered the Hearing Division to schedule oral
27 proceedings on the Amended Rules.

1 5. Pursuant to our August 11, 1998 Procedural Order, interested parties, including Staff,
2 could file written comments up through October 8, 1998.

3 6. On November 24, 1998, in contravention of the August 11, 1998 Procedural Order,
4 Staff filed additional comments in which Staff proposed additional changes to the Amended Rules.

5 7. On November 25, 1998, in Decision No. 61257, the Commission required the Hearing
6 Division to issue "a recommended order approving amendments to the Retail Electric Competition
7 Rules" and reduced the normal time frame for exceptions to the Order from ten days to five.

8 8. On December 11, 1998, in Decision No. 61272, the Commission adopted amendments
9 to the existing Rules, including Staff's additional changes proposed on November 24, 1998.

10 9. On December 31, 1998, numerous Parties timely filed Applications for Rehearing of
11 Decision No. 61272.

12 10. On December 31, 1998, after normal business hours, in Decision No. 61309, the
13 Commission denied the Parties' Applications for Rehearing.

14 11. The Commission has not resolved issues critical to creating a transition to a
15 competitive market in the public interest.

16 12. The Commission has not established a consistent market structure between other
17 jurisdictions and the Affected Utilities.

18 13. The Commission has not resolved questions of federal and state jurisdiction on
19 transmission issues critical to system reliability.

20 14. The Commission has not resolved issues on pricing and cost recovery for must run
21 generation.

22 15. The Commission has not considered nor approved unbundled tariffs for APS, TEP, or
23 Citizens Utilities Company.

24 16. The Commission has not resolved the issues of stranded costs for any Affected Utility.

25 17. Parties to this Docket should be given an opportunity to provide the Commission with
26 a list of issues still unresolved by the Rules along with a proposed schedule for resolving such issues
27 consistent with due process and public hearings.
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18. On January 4, 1999, RUCO filed an Application for Rehearing on Decision No. 61309.

CONCLUSIONS OF LAW

1. Decision No. 61257 pre-empted the Hearing Division from completing its analysis of the comments by the Parties.

2. Decision No. 61272 failed to give adequate consideration of the written comments of Parties in violation of A.R.S. § 41-1024(C).

3. There is good cause for the Commission to stay the effectiveness of the Rules and related Decisions.

4. The public interest justifies granting the Affected Utilities a temporary waiver from compliance with the Rules until further Order of the Commission.

5. The Commission has authority to receive further comments and schedule further proceedings on the Rules.

6. Decision No. 61309 should be vacated.

7. Reconsideration and/or Rehearing of Decision No. 61272 should be approved.

8. Decision No. 61272 should be stayed pending reconsideration by the Commission.

ORDER

IT IS THEREFORE ORDERED that Decision No. 61309 is hereby vacated, and reconsideration of Decision No. 61272 is hereby approved.

IT IS FURTHER ORDERED that all Affected Utilities are hereby granted waivers from compliance with the Retail Electric Competition Rules until further Order of the Commission.

IT IS FURTHER ORDERED that the Retail Electric Competition Rules are hereby stayed until further Order of the Commission.

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IT IS FURTHER ORDERED that the Hearing Division shall establish a Procedural Order to begin consideration of further comment and actions in this docket.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, STUART R. BRACKNEY, Acting Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 1999.

STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

DISSENT _____

1 SERVICE LIST FOR:

ELECTRIC COMPETITION RULES

2 DOCKET NO.:

RE-00000C-94-0165

3 All parties of the Electric Competition Rules Service List
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