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| IN THE MATTER OF THE COMMISSION'S INQUIRY INTO RETAIL ELECTRIC COMPETITION | DOCKET NO. E-00000W-13-0135<br><br>**NOTICE OF FILING COMMENTS OF TUCSON ELECTRIC POWER COMPANY AND UNS ELECTRIC, INC.** |

Tucson Electric Power Company and UNS Electric, Inc., through undersigned counsel, hereby file comments in response to the May 23, 2013 Letter from Executive Director Jodi Jerich in this docket.

RESPECTFULLY SUBMITTED this 15th day of July 2013.

TUCSON ELECTRIC POWER COMPANY
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Service List for Docket No. E-00000W-13-0135

By 

**Tucson Electric Power and UNS Electric**
**Joint Response to Staff Questions**
**In the Matter of the Commission's Inquiry into Retail Electric Competition**
**Docket No. E-00000W-13-0135**

Tucson Electric Power ("TEP") and UNS Electric, Inc. (the "Companies") hereby submit these joint comments in response to the questions about retail electric competition that were posed by Jodi Jerich, Executive Director of the Arizona Corporation Commission (the "Commission"), in a May 23, 2013 letter filed in Docket No. E-00000W-13-0135.

The Companies commend the Commission for its diligence in evaluating the full range of issues that would be associated with this potentially dramatic change. Arizona's existing, proven regulatory model provides residents and businesses with low, stable electric rates and highly reliable service from financially stable local utilities that rank highly in annual customer satisfaction surveys. In light of this success, we cannot see what problem this inquiry might be seeking to solve.

The Commission should carefully assess claims that retail electric competition – which primarily allows customers to choose a generation provider for power delivered through the incumbent utility's system – would represent an improvement over the status quo. While proponents tout that opportunity to choose as a benefit, its value obviously depends on the available choices. If customers in states with competitive retail electric markets could choose the rates, reliability and stability that Arizona customers already enjoy, their choice would be very easy indeed. The Commission should insist on clear and convincing evidence that this unproven regulatory model would provide tangible long-term benefits to Arizona customers in **all** rate classes, and that these benefits outweigh its significant risks and costs. If proponents of this radical change cannot provide such evidence, the Commission should promptly end this inquiry.

As the many questions raised by retail competition make clear, this burden of proof cannot be met. Experiments with retail electric competition in other states have not generated clear and convincing evidence of long-term benefits for all customers. Rather, those experiments have exposed the risks associated with retail electric competition, including higher costs, increased price volatility, capacity shortages, customer confusion, market manipulation and a loss of state regulatory oversight. States with stubbornly high electric rates in regions better suited to competitive electric markets have chosen to assume those risks. Arizona, though, would be better served by retaining the low rates, high reliability and stable, transparent regulatory climate our customers already enjoy.

The Commission should decisively reject retail electric competition, providing regulatory certainty and assurance to Arizona residents that the benefits they enjoy under our traditional form of utility regulation will continue. To do otherwise would transform the stable, cost-effective provision of a critical, life-sustaining

service into a risk-laden enterprise driven purely by profit – an abdication of the Commission's constitutional obligation to act in the public interest.

In preparation for your decision on this matter, please consider the Companies' answers to the Commission's questions in light of the following observations:

- **Retail electric competition exposes customers to significant risks, costs and complexity in exchange for uncertain benefits.** The theoretical merits of electric competition have been overwhelmed by its real-world costs and consequences. In Arizona, a newly competitive retail electric market would deliver no more than new ways to pay for resources already in place here, with the additional risks of market volatility and the burden of paying for new, complex market infrastructure and other transition expenses. In TEP's service territory alone, the Companies estimate that customers would need to pay at least $500 million to provide accelerated recovery of utility investment costs incurred since Arizona's last attempted foray into retail competition. Those costs, combined with the unknown expenses of joining or creating an Independent System Operator ("ISO") or Regional Transmission Operator ("RTO") and other necessary changes, could boost rates in a newly competitive market well above current regulated levels.

- **Retail electric competition would place residential and small business customers at a disadvantage.** Independent power providers in restructured markets compete vigorously for large commercial and industrial customers due to their large power needs and steady load profiles. Residential and small business customers, on the other hand, attract less attention from providers due to their relatively low usage. As a result, they often choose not to choose, remaining on default service from the Provider of Last Resort ("POLR"). These residential and small business customers are left to pay even higher service costs because the default provider – often the incumbent utility – can no longer blend their peaking load profiles with the large, stable loads of industrial customers who have been "cherry picked" by other providers.

- **Retail electric competition is a long, complicated process that typically leads to more regulation, not less.** A transition to a fully competitive retail market would take several years at a minimum, imposing new administrative burdens and costs. In addition to establishing new competition rules and creating or joining an ISO or RTO, the Commission would need to reopen and amend existing rules that are incompatible with retail competition, including the Renewable Energy Standard ("RES"), the Energy Efficiency Standard ("EES") and the Integrated Resource Planning ("IRP") rules. Although the restructuring process is sometimes described as "deregulation," it ultimately leads to extensive new regulations – potentially including (but not limited to) price caps, generation subsidies, customer choice restrictions and market

manipulation rules – that would need to be drafted, debated, approved and continuously refined. Such complex, burdensome regulations are incompatible with the traditional definition of a free market, yet they are necessary components of retail electric competition. Thus, it is not surprising that restructuring has not delivered the theoretical benefits one might expect from competitive market forces.

- **Retail electric competition would compound the threats against Arizona's coal-fired power plants.** At the behest of a White House committed to combating climate change, the Environmental Protection Agency ("EPA") is aggressively interpreting and enforcing current emissions rules and drafting new restrictions on carbon dioxide ($CO_2$) emissions and other regulations that threaten the future of coal-fired power plants. As utilities face uncertainty about the outcome of these efforts and the prospect of steep compliance costs, the Commission's consideration of retail electric competition is premature and adds further risk to the future of a resource that Arizona residents rely on for affordable, reliable base-load power. A transition to a competitive retail electric market at this time could push the risks of coal-plant ownership beyond the breaking point, forcing a hasty rush to natural gas-fired generation that would reduce the diversity of our state's generating portfolio, increase price volatility, create additional transition costs and sacrifice jobs in some of our state's most vulnerable communities.

- **Retail electric competition would cede key decision-making responsibility and authority over Arizona's resource mix to entities outside of Arizona.** The short-term, market-driven decisions of private, out-of-state energy providers under federal – not state – oversight would effectively establish the mix and long-term adequacy of energy resources available to Arizona residents. This haphazard approach has led to capacity shortages in Texas and other competitive markets as well as an overreliance on natural gas, leaving customers vulnerable to even higher bills if the cost of that commodity rebounds to historically higher levels. In Arizona, such risks have been avoided through careful utility planning under the Commission's oversight through the IRP process. In a competitive market, those responsibilities would be turned over to an ISO or RTO subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). If that happened, the Commission would become just one of many litigants in that agency's review processes. In our view, the Companies and other Arizona utilities under the Commission's oversight are in a far better position to make decisions in the long-term best interests of Arizona residents.

- **Diverse customer choices already exist in Arizona's regulated market.** Advocates of retail competition tout the diversity of generation choices and pricing options available in states that have pursued that model. But Arizona's utilities already offer a broad variety of options, including time-of-

use and fixed price rates as well as incentives for energy efficiency and renewable power. With Commission approval, those options could be expanded even further under a traditional regulatory model in a way that ensures customers are not being overcharged or subjected to undue risks. The Commission also could allow utilities to develop additional choices for large power users without sacrificing their ability to ensure that those rates do not shift costs to residential and small business customers.

- **Retail electric competition would serve the interests of electricity generators and marketers, not customers.** Arizona residents already enjoy low rates, high reliability and strong customer satisfaction, benefits that some other states have sought to achieve through retail competition. Here, retail competition is being advanced as a panacea for problems faced by out-of state power providers, including some that invested in the development of natural gas-fired power plants in Arizona to capitalize on California's ill-fated embrace of retail electric competition. Rather than continuing to sell relatively low-cost power to utilities in the wholesale market, these out-of-state companies and other power marketers are seeking a government "bailout" through a mandated marketplace that might provide them with profits that far exceed the returns afforded to local regulated utilities. Such considerations would be of less concern if the system they were supporting could be counted on to deliver meaningful benefits for Arizona residents. But when one weighs the significant risks, costs and uncertainties of retail electric competition against the stable benefits of our current system, it becomes clear that this so-called solution would be the source of significant new problems for Arizona utility customers.

The Companies' responses to the specific questions posed by the Commission follow.

1. **Will retail electric competition reduce rates for all classes of customers - residential, small business, large business and industrial classes?**

There is no good reason to believe it would. While research into this question has reached varying conclusions, it does not, in aggregate, provide convincing evidence that retail competition leads to lower electric rates. Indeed, several recent studies suggest exactly the opposite result. A report issued in April 2013 by the American Public Power Association, for example, concluded that between 1997 and 2012, customers in states with deregulated electric markets faced steeper rate increases than those in regulated states.[1] Such increases were not limited to states with above-average energy costs. In the decade before Texas launched retail electric

[1] *Retail Electric Rates in Deregulated and Regulated States: 2012 Update,* American Public Power Association, April 2013. The Companies have provided access to the publicly-available resources cited in these Comments at www.uns.com, in the "Retail Electric Competition Comments" tab under "Quick Links".

competition in January 2002, that state's residents enjoyed electric rates that averaged 6.4 percent below the national average. Over the subsequent decade, those same residents paid rates that averaged 8.5 percent above the national average. Most tellingly, residents in Texas communities that were exempted from retail electric competition continued paying rates that were below the national average over that same period.[2]

The reluctance of residential customers in competitive markets to switch service providers reinforces the lack of perceived benefits among that class. Less than 25 percent of residential customers in Illinois and Maryland had switched providers by the end of 2012, while just 14 percent of residential customers in Massachusetts and New Jersey had done so.[3]

**Reduced economies of "scope"**

Kenneth Rose, a senior fellow with the Institute of Public Utilities at Michigan State University, suggests that the "lack of a clear benefit to residential customers in retail access states" – documented in his own comparison of rates in 44 states from 1990 and 2011 – stems from inherent cost disadvantages that competitive suppliers face in comparison to their traditionally regulated counterparts.

> *The term used to describe this difference -- one that may afford an advantage to vertically integrated utilities – is "economies of scope" (also known as vertical economies or synergies), this occurs when one firm can supply multiple products at a lower cost than could several separate firms making the same products independently. It was assumed when restructuring began that competition in generation (the energy component) would lower prices sufficiently to more than offset any higher costs that might be incurred to supply retail customers as a result of having multiple suppliers of these products in an amount sufficient to overcome the loss of vertical economies. The evidence so far suggests that has not yet happened.*[4]

In Arizona, the cost of abandoning these "economies of scope" would be compounded by significant transition expenses, including start-up costs for an ISO or comparable entity and the accelerated recovery of utility costs that would not likely be recoverable in a competitive market. While TEP recovered some so-called "stranded costs" through a settlement agreement signed during Arizona's previous dalliance with retail electric competition, the Companies would be entitled to accelerated recovery of more recent expenses, including the cost of restructuring or possibly divesting generation portfolios and the above-market costs of long-term

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[2] *Deregulated Electricity in Texas: A History of Retail Competition,* Texas Coalition for Affordable Power, December 2012.

[3] *2012 ABACCUS: An Assessment of Restructured Electricity Markets,* Distributed Energy Financial Group LLC, December 2012.

[4] Kenneth Rose, *State Retail Electricity Markets: How Are They Performing So Far?* ElectricityPolicy.com, June 2012.

renewable power purchase contracts. Accelerated recovery of such expenses would necessarily boost short-term electric rates for all Arizona customers, increasing the likelihood of higher bills under retail competition.

**Maximizing profits for power providers**

To maximize profits, competitive providers would surely target large business or industrial customers whose heavy consumption and high load factors would allow them to make better economic use of their generating resources. But their success in such efforts would only increase the expense of serving smaller business and residential customers, further increasing the upward pressure on rates in those classes. This compares poorly to our current system, in which the price benefits of our competitive wholesale procurement process are shared with all customers through rates overseen by an elected body of regulators committed to serving the public interest. In sum, there is no compelling reason to believe that retail electric competition could provide all classes of Arizona customers with a reduction of the relatively low rates they already enjoy.

2. **In addition to the possibility of reduced rates, identify any and all specific benefits of retail electric competition for each customer class.**

Retail electric competition does not provide any benefits that cannot be matched or improved upon in a traditionally regulated market. Supporters of retail electric competition contend it provides customers with a broad choice of rate plans and generation options. But such diversity of choice is not necessarily limited to markets with retail competition. Arizona utilities already offer a wide variety of rate options for their customers, including pre-paid service, budget billing, "green energy" rates and multiple time-of-use plans, including one designed especially for electric vehicle owners. At the Commission's discretion, Arizona's regulated utilities could develop an even greater variety of options for customers in all classes, including rates and tariffs that can adapt to changes in the marketplace, such as the need to encourage economic development. Moreover, such plans would be developed by financially stable, local providers under strict regulatory scrutiny to ensure they offered fair value for consumers.

3. **How can the benefits of competition apply to all customer classes equally or equitably?**

While customers in all classes would have reason to be frustrated by the lack of real benefits from a restructured market, retail electric competition creates greater disadvantages for some customers than others. Competition necessarily creates both winners and losers, and those terms apply to customers as well as providers. Large industrial customers are well-suited for competitive retail markets. Their heavy, steady usage attracts significant competition for their business, and they typically employ energy management professionals to help them negotiate the best possible contracts. Residential customers, by contrast, enjoy less buying power due

to their relatively modest usage and high service costs. While they may be offered a dizzying array of choices in competitive retail electric markets, they cannot select cost savings comparable to those offered to larger, more attractive customers. These disparities only increase if some providers serve only large commercial and industrial customers, removing their attractive load profiles from the marketplace and effectively increasing the cost of serving customers in other classes.

The Commission could attempt to mitigate the inequitable impacts of retail electric competition through rules intended to prevent "cherry-picking" of the largest customers. For example, as a condition of receiving a competitive certificate of convenience and necessity, providers could be forced to serve proportional shares of customers in all classes and load profiles through "slice of system" auctions, essentially reproducing the demographics served by the regulated utilities they are seeking to displace. Such rules would be difficult to administer and would add new regulatory burdens to a market already saddled with significant transition costs, transmission constraints and resource planning challenges. Moreover, the need for such rules would call into question the justification for implementing retail electric competition in the first place.

4. **Please identify the risks of retail electric competition to residential ratepayers and to the other customer classes. What entity, if any, would be the provider of last resort?**

**Reduced long-term reliability**

First and foremost, retail electric competition would complicate long-term, strategic resource planning and could compromise the long-term reliability of Arizona's electric service. The Commission currently oversees the responsible development of necessary generating resources by Arizona utilities through its IRP process. In a competitive market, the Commission would be sacrificing the surety of supply to the whims of the market. The financial stakeholders in such markets have no reason to incur the steep up-front costs of power plant construction unless they are confident the returns will outstrip the profits that can be collected at far less risk from an underdeveloped market where generation is in short supply.

So far, that cold calculus has contributed to short-sighted resource evaluations and a dearth of generation development in states served by competitive markets, reducing reserve margins and greatly increasing the risk of price spikes and supply shortages. The reserve margin in Texas, for example, has fallen from the nation's largest to one of the lowest since that state embraced retail electric competition.

To address this problem, regulators are experimenting with new generation incentives or, in some cases, outright mandates for the construction of plants. ISO New England, which serves a competitive retail electric market in six Eastern states, recently filed with FERC a proposal for "out-of-market" solutions to address looming reliability risks due to a lack of available generation. In the PJM marketplace, states

that previously restructured are now concerned about the lack of adequate generating capacity and high costs; as a result, they are reducing their reliance on market forces and taking matters into their own hands. Maryland's Public Service Commission ordered that state's distribution utilities to enter into contracts to facilitate the construction of approximately 700 megawatts ("MW") of new generation.[5] New Jersey lawmakers established incentives for the construction of up to 2,000 MW of new generation. Interestingly, many of the owners of the existing "competitive" generation in the PJM market have filed challenges at FERC and in the courts against these efforts to improve reliability, lower costs, curb emissions, and create jobs.

As such desperate efforts make clear, states with competitive retail electric markets cannot match the reliable generating resources made available by Arizona utilities under the Commission's regulatory oversight.

**Potentially higher rates**

Another obvious risk of retail electric competition is the prospect of higher electric rates for a majority of customers. As noted above, there is no convincing evidence that competition has produced the lower retail prices that supporters of the model often promise. The theoretical economic benefit of pitting power providers against each other for the opportunity to serve customers has been offset by real-world costs, transmission constraints, generation shortages, reliability concerns and other challenges unique to the retail electric marketplace.

**New costs for customers**

Numerous new expenses would boost the cost of service in a competitive retail market. Rates would reflect the costs of transitioning to such a system, including the significant expense of establishing and operating an ISO or comparable entity and the accelerated recovery of authorized utility investments that could not be recouped in a competitive market. Each competitive provider also would be forced to incur their own costs for marketing, customer service, billing and other services now consolidated with regulated utilities, eliminating the "economies of scope" described above.

The complex business and customer service interactions in a competitive retail market would likely increase local utility operating costs, while the uncertainty associated with such markets could boost utility financing expenses. While these costs would be borne by all customers, others would inordinately affect residential customers and small businesses. When competitive providers "cherry-pick" industrial and large commercial customers, the removal of their large, stable load

[5] *In the Matter of Whether New Generating Facilities are Needed to Meet Long-Term Demand for Standard Offer Service*, Public Service Commission of Maryland, Case No. 9214, Order No. 84815 (April 12, 2012).

from the market effectively increases the cost other providers must incur to serve remaining customers.

**More volatile prices**

In addition to imposing new costs, a competitive retail electric market could increase the volatility of prices paid by customers. Independent power providers ("IPPs") in Arizona would rely almost exclusively on natural gas-fired generating resources, which typically set the marginal price in wholesale power markets. When natural gas prices are low, as they are now, these IPPs would enjoy a better chance of competing with the cost of output from more diverse utility generating portfolios. But natural gas prices are subject to significant volatility, and rising prices would leave IPPs little choice but to pass higher costs along to customers. Price spikes are a frustratingly common occurrence for customers and regulators in restructured energy markets, and competitive providers have less ability to cushion such blows for customers. Such volatility is tempered by the regulated rates of Arizona's utilities, which phase in such costs more gradually.

**Customer dissatisfaction**

The risk of customer dissatisfaction is significant in competitive markets. The variety of choices made available by competing providers leads to confusion and increases the likelihood that customers will choose a plan and/or provider poorly suited for their needs. Such mistakes can impose significant economic consequences for fixed-income customers, particularly when contract terms or market rules limit opportunities to switch providers or plans. Large commercial and industrial customers can limit such mistakes by employing energy management professionals to help them secure advantageous rates. Residential customers, by contrast, have less time and expertise to devote to such choices and may prove overly responsive to marketing messages and short-term incentives. A significant increase in customer complaints is a predictable consequence of retail competition. In Texas, for example, electricity-related complaints to that state's Public Utility Commission increased more than eight-fold upon the introduction of retail competition.[6]

**Threats to low-income customers**

Low-income residents would face even greater risks than other customers in a competitive retail electric market. The discount programs currently offered by Arizona's regulated utilities would have to be adapted to a competitive market, imposing new administrative burdens and enforcement challenges for the Commission and potentially confusing new requirements on participants. Unlike regulated utilities, which are obliged to serve all customers in their exclusive

[6] *Deregulated Electricity in Texas: A History of Retail Competition*, Texas Coalition for Affordable Power, December 2012.

territory, IPPs could be expected to shun low-income customers and customers with poor credit and their associated customer service costs.

**Higher costs for Provider of Last Resort**

The need for a POLR highlights the many risks customers face in a competitive retail electric market. Such providers serve customers who either fail to choose an electric provider or need continued service when their chosen provider either goes out of business or cancels their accounts. Low-income customers would likely be overrepresented among POLR customers as competitive providers would not be expected to target or retain residential customers with poor credit histories or bill payment struggles. POLR service costs would likely be among the highest in the market because customers who could be served at lower cost, with fewer customer service engagements and more attractive load profiles, would be targeted and retained by competitive providers. If competition necessarily creates winners and losers, then POLR is where you will find the losers.

In Arizona's regulated market, the Companies proudly embrace our obligation to serve. We are fully committed to providing safe, reliable, responsive and cost-effective service to all customers, large and small. This high level of service is made possible by balancing the costs and benefits associated with serving a wide variety of customers in all customer classes. This balance would be compromised by retail competition, particularly if competitors are allowed to "cherry pick" customers with the most attractive load profiles. For that reason, the Companies would object to being assigned POLR obligations unless the terms for providing that service fully compensated our shareholders for its inherently higher high costs, risks and uncertainties. Such rates would likely be higher than those paid by the Companies' current customers.

5. **How can the Commission guarantee that there would be no market structure abuses and/or market manipulation in the transition to and implementation of retail electric competition?**

No such guarantee could be made in good faith given the long history of market manipulation in competitive wholesale and retail electric markets. While other states have drafted rigorous rules and imposed costly new oversight duties on state government regulators and market monitors, such efforts would not prevent unethical competitive service providers from manipulating the complex, experimental, and relatively untested rules that would govern a competitive retail electric market in Arizona.

Although the details vary from region to region, every competitive retail electric market other than Texas (which is managed by ERCOT) is overseen by an ISO that incorporates FERC-approved price caps and other market power controls implemented by independent market monitors. These controls typically seek to limit the prices paid to market participants who enjoy excessive market power,

essentially just re-regulating the generation business. The effectiveness of these controls remains unclear. Given the history of price spikes, market abuses and limited development of new generating capacity in those markets, such controls both fail to fully protect consumers from market power abuses and fail to provide adequate incentive for the capital investment needed to serve customers reliably – a lose-lose outcome.

**Persistent market manipulation**

Unfortunately, cases of market structure abuses and manipulation appear to be common in competitive markets. While the disastrous results of California's experiment with retail electric competition remain vivid in the minds of many Arizona residents, one needn't look back so far to conclude that competitive electric markets remain ripe for manipulation and abuse. In recent months, FERC has issued numerous orders on market manipulation, including:

- A consent decree imposing a civil penalty of $135 million and disgorgement of $110 million of unjust profits on Constellation Energy for alleged manipulation of energy prices in and around the NYISO control area;[7]
- A consent decree including a civil penalty of $10 million and disgorgement of $2.8 million of unjust profit for alleged fraudulent conduct in the ISO-NE day-ahead load response program;[8]
- A consent decree including a civil penalty of $1.5 million and disgorgement of unjust profits of $172, 645 by Deutsche Bank for alleged manipulation of California power markets;[9]
- A settlement with a subsidiary of Enterga Power Group LLC involving a $2.5 million fine and disgorgement of unjust profits of $911,553, plus interest, where a market participant admitted to using wheeling- through transactions in the CAISO to increase the value of power generated at its Gila River Station, located southwest of Phoenix; and[10]
- A show cause order issued to Barclays Bank, PLC proposing a civil penalty of $435 million and disgorgement of $34.9 million, plus interest, of unjust profits, as well as civil penalties against individual traders, for manipulative energy trading in the physical electricity markets in and around California to benefit Barclays' financial swap positions in those markets.[11]

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[7] *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (March 9, 2012) Docket No. IN12-7-000.

[8] *Rumford Paper Company*, 142 FERC ¶ 61,218 (Issued March 22, 2013) Docket No. IN12-11-000.

[9] *Deutsche Bank Energy Trading, LLC*, 142 FERC ¶ 61,056 (January 22, 2013) Docket No. IN12-4-000.

[10] *Gila River Power,LLC*, 141 FERC ¶ 61,136 (November 19, 2012) Docket No. IN12-8-000.

[11] *Barclays Bank PLC, Daniel Brin, Scott Connelly, Karen Levine, and Ryan Smith*, 141 FERC ¶ 61,084 (October 31, 2012) Docket No. IN08-8-000.

**Potential customer abuses**

In addition to policing manipulation in wholesale markets, the Commission would need to be vigilant about abuses at the retail level. Arizona would need to establish minimum capitalization requirements, tests of credit-worthiness and other standards for certifying competitive energy suppliers to ensure they would be in a position to deliver on commitments made to consumers. These commitments include not only guarantees of energy supply itself, but also energy pricing. Failure to monitor the financial condition of participants exposes retail consumers to the risk that suppliers are not robust enough financially to properly hedge their commitments. These commitments require either posting of collateral or strong balance sheets.

The Commission also would need to establish marketing guidelines to prevent customers from being transferred to a new supplier without their consent, a process known as "slamming." Limits on switching from competitive market to a POLR also would be needed. Without such rules, competitive suppliers could encourage customers to switch to POLR service during periods of high energy prices, freeing the providers to seek a higher profit for their energy in the spot market. Such abuses could result in significant windfalls to competitive suppliers with increased costs to POLR customers. These sorts of abuses also could disproportionately impact low-income and fixed-income customers, who are clearly not in the position to withstand bill shocks.

6. **What if any, features, entities or mechanisms must be in place in order for there to be an effective and efficient market structure for retail electric competition? How long would it take to implement these features, entities, or mechanisms?**

**Costly new wholesale market infrastructure**

To facilitate full retail competition, Arizona would need infrastructure to manage grid operations, ensure equitable access to transmission resources and combat market manipulation and abuse. This would require either the establishment of an ISO or similar entity or a decision by Arizona utilities to join an existing ISO, such as the California ISO ("CAISO"). Traditionally, utilities in Arizona have resisted the establishment of an ISO due to significant startup costs and concerns about sacrificing local authority and control to FERC. Joining the CAISO would similarly cede authority to FERC while causing other problems. Although Arizonans would have some input into the entity's decisions, our state's customers would be subject to significant bill impacts based on decisions made out of state and outside of the Commission's direct control.

**Steep transition costs**

The Commission also would need to establish the costs of transitioning to a competitive retail market. Many of the costs utilities incurred under the Commission's oversight in anticipation of continued service to exclusive retail customers would prove unrecoverable in a competitive retail market, where such long-term investments might hamper short-term performance. For example, a utility's cost to build a Commission-approved power plant might be recovered over 40 years of regulated service. If the Commission were to change course and launch a competitive retail market just 20 years after that investment, the utility would be left to recover the plant's remaining costs through energy sales in a competitive market. If the plant's unrecovered costs exceed the expected returns through market sales of energy, then the utility would be denied the opportunity to recover its previously approved investment. To establish a level playing field for all competitors – where prices are based on marginal costs – the Commission would need to determine the extent to which unrecovered utility costs exceed the fair market value of those assets. Consistent with treatment in other markets that restructured, including Arizona, these transition costs, which have been described in the past as "stranded costs," would be recovered on an accelerated basis through a fixed charge on all customers' bills.

**Consumer protections needed**

The Commission also would need to establish consumer protections to ensure that retail providers do not take advantage of customers through misleading or unethical tactics. Such protections would most likely compel the Commission to expand its staff and incur additional costs to ensure that customers are protected from the potential market abuses, including the sort mentioned in our response to Question 5. The Commission also may seek to participate as a stakeholder in a FERC process to establish market manipulation rules for Arizona. Additionally, the Commission would need to establish rules for POLR service for customers who have not selected a competitive supplier or are without such a supplier for whatever reason. These issues are discussed in the Companies' responses to Questions 5 and 4, respectively.

**New overhead for providers**

Arizona's utilities would need to install or modify information technology ("IT") systems to facilitate retail competition – a costly endeavor. A new load profiling system would be needed to estimate energy usage by individual customers, and other systems and procedures would be required for collecting and sharing usage data collected from both mechanical and "smart" meters. The utilities' customer information and billing systems would need to be modified or replaced to accommodate third-party generation providers (assuming the incumbent utilities remain responsible for billing customers). Systems would have to be created for transferring electronic data between the distribution companies and competitive

suppliers, along with detailed rules regarding the processing of customer payments and maintaining the confidentiality of customer data.

**Customer education needs**

The introduction of retail competition would require the Commission to oversee a coordinated proactive campaign to educate customers about the many changes. In other states, competitive providers have flooded customers with a confusing array of complex offers pitched using simplistic language and marketing incentives that include pre-paid Visa cards and customer referral discounts. While a government mandated outreach campaign might help prepare customers for such tactics, many will likely remain confused and dissatisfied with the abandonment of a traditional regulatory system that has generated such strong customer satisfaction results for Arizona's regulated utilities.

**A lengthy transition**

While the time needed to transition to a fully competitive retail electric market in Arizona is unknown, the period would be measured in years, not months. If the Commission commits our state to this risky and costly course, the Companies would strongly advise that Arizona follow the lead of other states and establish an ISO or RTO first before attempting to institute competition at the retail level. Given the complexity of the task and the anticipated lack of consensus among stakeholders, it is fair to suggest that several years would be needed before the transition could be completed. The fact that FERC would likely have jurisdiction over some or all of the necessary steps – and that that time-consuming appeals of FERC rulings on this matter would be likely – would add further uncertainty to an implementation timetable. Finally, it would be necessary for the utilities to file rate cases in order to adjust their rates and charges to accommodate this new regulatory mode.

7. **Will retail electric competition require the divestiture of generation assets by regulated electric utilities? How would FERC regulation of these facilities be affected?**

The Commission lacks legal authority to require divestiture, as described more fully in our response to Question 13. Nevertheless, it is unclear whether a fully competitive retail electric market can exist in Arizona without separating utility-owned generation from transmission and distribution operations and, in so doing, placing it outside of the Commission's jurisdictional control. It should be noted that reliability must-run generation needed to maintain power import capacity is considered a necessary aspect of distribution operations and, as such, would not be divested.

In such a transition, the Companies and other regulated providers would be entitled to accelerated recovery of costs that otherwise would have been collected over time through regulated rates. Divestiture would facilitate this process, since evaluating

which generation assets and power procurement contracts reflect above-market prices would be more difficult without contemporary purchase prices to establish their current values. Plant values would be reduced by transmission constraints inherent to the current regulated system, which encouraged the development of remote generating plants linked to load centers by lengthy transmission lines. Those lower values would leave higher levels of utility plant investment to be recovered from customers through a non-bypassable charge. If an RTO or ISO subsequently mandated construction of new transmission lines that provided those plants with better access to load centers, that expense, too, would be borne by customers.

Finally, divestiture would reduce the "economies of scope" that help Arizona's vertically integrated utilities hold down costs for customers. Competitive providers would have to maintain their own staffs of accountants, auditors, compliance specialists and so on, duplicating the capabilities of incumbent utilities and their competitors. This redundant staffing would add costs to a competitive market without increasing the overall level of service and reliability to customers.

**8. What are the costs of the transition to retail electric competition, how should those costs be quantified, and who should bear them?**

As noted in responses above, the transition to retail electric competition would create significant new costs that would necessarily be borne by electric customers in Arizona. Those costs could include, but are not limited to, the following:

- The cost of establishing an ISO or comparable entity to manage and police Arizona's energy marketplace;
- The cost of new IT systems, additional personnel and other necessary infrastructure at Arizona utilities to facilitate a competitive retail electric market;
- The cost of divesting or restructuring the generation portfolio of Arizona utilities;
- The accelerated recovery of above-market costs of utility generation and transmission assets, including renewable power supply contracts and related regulatory assets; and
- The cost of significant customer outreach campaigns to provide education about a newly complex energy market.

Quantifying these costs could prove challenging. For assets not voluntarily divested to a third party, the stranded cost would need to be determined through a costly, complex and contested appraisal process overseen by the Commission or the courts. These costs, once calculated, would be combined with newly incurred costs, such as the expense of establishing an ISO and other infrastructure necessary for a fully competitive market.

To avoid tilting the scales of competition against incumbent utilities or any other provider, such costs would need to be recovered through a non-bypassable charge on the bills of all electric customers. This charge would increase the near-term costs of a competitive market, making it more likely that Arizona customers would face higher bills than they would under traditional regulation.

**9. Will retail electric competition impact reliability? Why or why not?**

Arizona would face the same risk assumed by other competitive states that have seen their power reserves eroded by a lack of new generation development. Although competitive retail electric markets typically include capacity markets or other generation incentives, these inducements have not always attracted enough resources to provide an adequate level of reserves to compensate for plant outages or higher-than-expected loads. Such contingencies increase power prices, so providers in those markets may not wish to take on the risk and expense of expanding their capacity if doing so would only reduce the price of their product. While new renewable resources may be developed to serve customers seeking "green" power, such intermittent resources cannot be relied upon for reliability purposes. It should be noted that capacity shortages threaten the steady supply of energy for all customers in our interconnected system, not just those who choose competitive providers in an open retail market.

**Capacity shortages common**

Serious generation reliability issues have developed in multiple competitive retail electric markets. For example, in New England, a once diverse mix of generating resources has become heavily dependent on gas-fired generation, exposing customers to price volatility based on the cost of natural gas and the risk of supply curtailments at times of year where natural gas is in high demand as a heating fuel.[12] Closer to home, in Texas, new power plant construction is not keeping pace with load growth and availability of sufficient generation to meet peak load is a serious problem.[13] Although efforts are underway to address this issue, the regulatory solutions under consideration are not guaranteed to work and may impose significant costs on customers for the benefit of existing generators.[14] Arizona should monitor developments in restructured states to determine if, or how, the long-term capacity market issues that have accompanied retail choice can be successfully addressed. At present, the real world capacity market issues more than offset the theoretical gains from implementing retail competition.

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[12] Meg Handley, *Increased Dependence on Natural Gas Exposes Holes in U.S. Electrical Grid*, U.S. News and World Report, March 20, 2013.
[13] Robert Marritz, *Texas's Capacity Problems Remain, as its Hot Retail Choice Market Jumps*, ElectricityPolicy.com, March 3, 2013.
[14] Anna Sommer & David Schlissel, *A Texas Electricity Capacity Market: The Wrong Tool for a Real Problem*, The Institute for Energy Economics & Financial Analysis, February 12, 2012.

Only by maintaining Arizona's current regulatory model can the Commission ensure an adequate and appropriate mix of generating resources for Arizona's utility customers. The existing IRP process allows the Commission to thoroughly review the choices utilities make in developing their generating portfolios, evaluating the adequacy of reserves and weighing critical factors with a long-term, strategic perspective – such as fuel diversity, economic impacts and other policy priorities – that would be largely irrelevant to providers in a competitive market. If, for example, the Commission sees value in maintaining cost-effective access to coal-fired generation as a reliable source of base-load power, it should be wary about sacrificing its influence over such considerations to federal authorities and independent power providers whose short-term priorities may not serve the long-term interests of Arizona residents.

**10. What are the issues relating to balancing area authorities, transmission planning, and control areas which must be addressed as part of a transition to retail electric competition?**

Whether balancing authority remains with incumbent utilities or transitions to an ISO, the cost of providing this service could increase over time if retail competition leads to a reduction in reserve capacity, as has happened in many other competitive markets. Such conditions would contribute to higher retail prices and increase the need for strict monitoring to prevent generation providers from manipulating a tightened market. Balancing authorities and control areas also would need additional operating resources to accommodate a competitive retail market. These resources would include a mechanism for tracking hourly required generation by other market participants and additional man-hours to meet the scheduling/tag verification requirements and associated accounting tasks that additional owners and participants in the state bring with them.

If Arizona creates or joins an ISO, that entity would assume responsibility for transmission planning. Accordingly, the Commission would lose oversight of a key factor in ensuring reliable and equitable access to energy resources. Transmission planning would become more complicated and costly in a competitive retail market. Rather than relying on comprehensive load and resource data from a single, exclusive provider, planners would have to compile less reliable and potentially incompatible data from every provider in a competitive market.

**Less reliable forecasting**

Planning would be further complicated by a less predictable resource mix that would be determined by market forces, not long-term integrated resource planning. As a result, this mix would be subject to sudden changes due to bankruptcies, fuel cost spikes and other market-influenced changes.

Planners also would be challenged to adapt a system that has been developed to serve regulated, exclusive load pockets to accommodate the new and evolving

energy flows of a volatile competitive market. If the ISO mandated construction of new transmission assets to provide competitive access to previously captive generating resources and load pockets, those costs would necessarily be passed along to customers.

Finally, an ISO would likely assume overall transmission control area authority for the region, with operations handled by transmission owners. This transition would have to be carried out with extreme care to maintain reliability and avoid adverse impacts on service to customers.

**11. Among the states that have transitioned to retail electric competition, which model best promotes the public interest for Arizonans? Which model should be avoided?**

No state offers a model for retail electric competition that would serve Arizonans better than the current model of regulated retail rates. As noted in our response to Question 1, there is no convincing evidence that any model of competition has reduced rates for customers in all classes. Average rates in states with competitive retail electric markets remain significantly higher than those in regulated states, and no state's model for competition is immune from the risks, costs, equity concerns and reliability challenges identified throughout this document.

**12. How have retail rates been affected in states that have implemented retail electric competition?**

As noted above, there is no clear evidence that retail competition has reduced rates for consumers overall. A number of studies have been conducted in this area, but the results are mixed and some of the study assumptions and approaches are susceptible to easy challenge.[15] Regulated electricity prices are subject to a variety of factors including fuel costs, load growth, capital spending, capital market conditions, and social programs recovered in rates. Determining the impact of retail competition on electric rates requires the estimation of what rates would have been absent retail competition – no easy feat.

There is no reason to expect that retail competition would reduce the electric rates paid by Arizona customers. If providers rely on Arizona's existing mix of generating resources to compete based on short-run marginal costs and the utilities' historic costs are recovered from all customers through a non-bypassable charge, there will be no reduction in overall costs in the system. Rather, the accelerated recovery of those above-market costs and other transition expenses (see the responses to questions 5 and 6, above) would add new costs that would need to be recovered through higher rates, at least in the near term. Any benefits from competition would first have to offset these significant costs before providing net benefits to customers.

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[15] John E. Kwoka, *Restructuring the U.S. Electric Power Sector: A Review of Recent Studies*, Public Power Magazine, May-June 2007.

**Vulnerable to fuel price spikes**

Fuel prices clearly have a significant impact on electric rates. In Arizona's regulated market, all the benefits of lower fuel prices are passed along to utility customers. In a competitive market, suppliers may or may not do the same. If competitive providers who rely exclusively on natural gas-fired generation provide customers with greater exposure to market prices, as seems likely, those customers will experience greater volatility than they do today. In theory, that volatility will provide consumers with sound price signals that may prompt them to take action to manage their energy costs. In practice, though, those signals are likely to leave customers dissatisfied and unhappy.

**13. Is retail electric competition viable in Arizona in light of the Court of Appeals' decision in *Phelps Dodge Corp. v. Ariz. Elec. Power Coop*, 207 Ariz. 95, 83 P.3d 573 (App. 2004)? Are there other legal impediments to the transition to and/or implementation of retail electric competition?**

Retail electric competition raises significant legal issues at both the wholesale and retail market levels. In addition to overcoming challenges posed by the *Phelps Dodge* decision, the Commission would have to develop comprehensive rules to re-regulate electric service in Arizona and ensure appropriate oversight of retail competition. The *Phelps Dodge* ruling and other legal factors create uncertainty about the Commission's ability to develop rules that could facilitate viable competition for all customer classes and withstand likely legal challenges.

**Legal issues addressing the wholesale energy market**

The Commission recognized in the Track A Order (Decision No. 65154 (Sept. 10, 2002)) that a vibrant wholesale market is critical to ensuring effective retail competition for all customers and to avoid possible market malfunction and manipulation. In the Track A Order, the Commission concluded that the wholesale market in Arizona was not sufficiently vibrant to support retail competition and, as a result, took several actions to slow competition, including staying any divestiture of assets by incumbent electric utilities and reducing the amount of electricity that those utilities had to procure from the wholesale market.

Today, the landscape is, if anything, more daunting. The EPA's aggressive interpretation and enforcement of air quality rules threatens to force the closure of numerous coal-fired generating units in our region, imposing new constraints on the wholesale energy market. Meanwhile, the steps and structures necessary to prepare the wholesale market to support a fully competitive retail market still face legal impediments. For example:

- *Phelps Dodge* held that the Commission lacks authority to require Public Service Corporations ("PSCs") to participate in centralized wholesale power

scheduling and coordination through RTOs, ISOs or the like. 207 Ariz. at 112-13, 83 P.3d at 590-91.

- *Phelps Dodge* also held that the Commission did not have the authority to require PSCs to divest their generation assets. 207 Ariz. at 113-14, 83 P.3d at 591-92.

Any voluntary divestiture of generation assets may be subject to FERC approval. FERC would subject such transactions to a variety of tests, including, among other things, (i) whether the divestiture is consistent with the public interest; and (ii) whether the transaction would effect a cross subsidization of a non-utility associate company that would not serve the public interest. FERC also would examine the effect of the divestiture on competition, rates and regulation, paying particular heed to generation market power issues. FERC has previously expressed market power concerns about Arizona's lack of sufficiently liquid power transaction hubs, and the state's reliance on remote generation linked to load centers by long transmission lines could be further cause for concern in a competitive market.

If divestitures were indeed completed, the Commission would lose oversight of the divested assets, which would be subject exclusively to FERC jurisdiction with respect to prices charged for wholesale power sales. Moreover, assuming an appropriate RTO/ISO could be proposed (or assuming Arizona would join the California ISO), FERC would then oversee those operations as well.

**Legal restrictions on retail electric rates**

Any non-governmental/non-municipal entity providing retail electric service in Arizona is a PSC subject to the Commission's jurisdiction. Arizona Constn. Art. 15, Sec. 2. As such, the Commission has an obligation to ensure that the PSC is offering service at just and reasonable rates. Id., Art. 15, Sec. 3. *Phelps Dodge* held that the Commission could not rely on the market to set "just and reasonable" rates. 207 Ariz. at 106-08, 83 P.3d at 585-87. Moreover, under *Phelps Dodge*, the Commission must consider fair value in approving a competitive PSC's rates. Id.

**Legal requirements regarding transition costs**

The governmental action requiring the transition to retail competition will create financial burdens on the Companies and other incumbent utilities that have borne the obligation of the regulatory compact - the provision of safe, reliable electric service to all customers in their service territories. The Companies and other utilities will have to implement a variety of IT and other infrastructure changes to be able to allow competitive PSCs to provide retail service. Moreover, retail competition will devalue certain utility assets that had been necessary to meet the longstanding obligation to serve as a regulated monopoly. Any retail electric competition scheme must adequately compensate the Companies and other regulated utilities for the costs of the transition to avoid an unconstitutional taking.

If restructuring of the Arizona's electric marketplace creates any uncertainty about the recovery of these so-called "stranded costs," the Companies would likely suffer significant adverse impacts to their financial health and stability. The Companies' ongoing obligation to maintain their transmission and distribution infrastructure will continue to require significant incremental capital investment. Any uncertainty regarding stranded cost recovery would adversely affect access to capital markets and the terms of financings, resulting in higher costs of capital and higher rates to customers.

**Legal requirements for Commission rulemaking**

The Commission will have to adopt comprehensive rules to provide appropriate oversight of retail competition. The *Phelps Dodge* decision also provided guidance on which rules must be submitted to the Arizona Attorney General for approval. *Phelps Dodge*, 207 Ariz. at 115-17, 83 P.3d at 594-96. There is no assurance the Attorney General would approve such rules.

**14. Is retail electric competition compatible with the Commission's Renewable Energy Standard that requires Arizona's utilities serve at least 15% of their retail loads with renewable energy by 2025? (See A.A.C. R14-2-1801 et seq.)**

In the Companies' view, the RES rules would need to be modified to address the administrative challenges and prospective inequities that could result from its application to a competitive retail electric market.

A competitive provider could be considered an "affected utility" under the RES and subject to the same escalating annual renewable energy requirements – based on retail kWh sales – as incumbent utilities. But compliance would be challenging at best and possibly unworkable, given the difficulties associated with forecasting any provider's retail sales and managing the impact of customer switching on the distributed generation requirement.

In the Companies' view, the RES rules do not appropriately contemplate retail competition and would need to be modified to address issues such as renewable energy surcharge cost-shifting, load forecasting, utility scale requirements, energy scheduling, system balancing, and ancillary service requirements. Those modifications could, in turn, add some or all of the Companies' renewable energy investments to the so-called "stranded costs" that would need to be recovered through a non-bypassable charge on customers' bills.

**Penalizing incumbent utilities**

A transition to a competitive market also could penalize incumbent utilities and their customers for complying with the current rules. The Companies and other

utilities subject to the RES and its predecessor, the Environmental Portfolio Standard, have been entering into renewable energy supply contract and developing renewable energy portfolios for more than a decade. The decisions to issue requests for proposals (RFPs), enter into long-term power purchase agreements (PPAs), and invest capital to develop renewable facilities were tied to the renewable energy goals associated with our exclusive obligation to serve all customers within our respective service territories.

The portfolios developed through these efforts necessarily include older resources that have been dollar-cost averaged and distributed equitably among all our customers. Because such costs exceed current market prices, the Companies would seek their accelerated recovery through a non-bypassable wires charge applied to the bills of all customers. Without this charge, which would increase rates in a competitive market, incumbent utilities and their customers would be saddled with inequitably high renewable energy costs incurred on behalf of customers who move on to other providers.

**15. Is retail electric competition compatible with the Commission's Energy Efficiency Standard that requires Arizona's electric utilities to achieve a 22% reduction in retail energy sales by consumption by 2020? (See A.A.C. R14-2-2401 et seq.)**

As with the RES, the EES would need to be modified to address the new administrative challenges and prospective inequities that could result from its application to a competitive retail electric market.

Although competitive providers could be considered "affected utilities" under the EES, they would face significant compliance challenges that were unanticipated at the time those rules were written. Individual providers in a competitive market would have great difficulty forecasting sales figures for forthcoming years, greatly complicating their efforts to secure an appropriate amount of savings through annual implementation plans that would need to be reviewed and approved individually by the Commission and its staff. In such a system, program administration costs would rise, energy savings would fall and customers would face a confusing array of surcharges and programs that ultimately contribute to growing dissatisfaction.

Alternately, the incumbent utilities that would provide distribution service in a competitive market could operate energy efficiency programs on behalf of all providers. All customers would pay a surcharge to fund such programs as well as a Lost Fixed Cost Recovery ("LFCR") fee to compensate the utility for the associated reduction in revenue. Such a system, while potentially workable, would require a modification to the existing EES.

**16. How should the Commission address net metering rates in a competitive market?**

The Commission would need to revise its net metering rules to clarify numerous issues raised by a competitive retail electric market, including the definition of "electric utility" and the necessary provision of balancing and ancillary services. Net metering rates also should be designed to fairly compensate customers in a competitive market for the excess energy produced by their distributed generating ("DG") systems without compromising the service provider's ability to recover their full fixed costs of service, which are not meaningfully diminished by such systems.

Finally, the impact of retail competition is not reflected in the LFCR mechanism incorporated in TEP's recently approved rates to compensate for cost recovery lost to energy efficiency, distributed generation, and net metering. Accordingly, the recovery of such costs would need to be effected through a non-bypassable charge on the bills of all customers in a competitive market.

**17. What impact will retail electric competition have on resource planning?**

In adopting retail electric competition, the Commission would necessarily relinquish its control of resource planning to the market. Competitive providers and the financiers who back them would establish their own resource mix for Arizona and determine for themselves whether they want to provide enough reserve capacity to accommodate sudden plant outages or unexpected peaks in demand. As noted above, other states and regions with competitive retail markets have struggled to maintain adequate reserve margins as providers have proven reluctant to bring new resources online. A similar fate could befall a competitive market here, particularly if market forces ultimately compel the closure of coal-fired power plants that currently provide much of our state's base-load power.

**Abandoning long-term planning**

In embracing competition, the Commission would be abandoning a comprehensive planning process that serves the best interests of customers. Arizona's IRP rules require that regulated utilities focus on maintaining long-term resource adequacy and rate stability for all customers. The Commission ensures that utilities have enough resources to serve 100 percent of their customers' anticipated needs plus adequate reserves to cover any contingency. These efforts are subjected to scrutiny through bi-annual IRP filings and annual summer preparedness reviews. To satisfy these requirements, utilities have adopted hedging and procurement strategies that emphasize stability rather than returns to shareholders. The rules also require utilities to consider the long-term value of a wide range of resources, discouraging our over-reliance on any one resource that might prove more profitable in the short term.

**18. How will retail competition affect public power utilities, cooperatives and federal controlled transmission systems?**

Arizona's heavy reliance on such systems, which provide nearly 40 percent of our high-voltage transmission system capacity, would complicate efforts to create a competitive retail electric market here. Western Area Power Administration (WAPA) lines are critical to transmission of power across the state, while Salt River Project (SRP) provides electric service to nearly 2 million customers in central Arizona. Both entities are exempt from the Commission's oversight and could not be compelled to participate in an ISO or adopt other aspects of a state-mandated competitive system. Without the participation of such entities, the reliability of Arizona's remaining system could be compromised.

**Conclusion**

As our answers above make clear, a transition to retail electric competition in Arizona would impose new costs, greater inequities, significant risks and daunting regulatory and legal challenges without delivering real benefits for customers. The prospects for restructuring are no better now than they were the last time that out-of-state power providers, emboldened by low natural gas prices, convinced this Commission to consider abandoning its historic oversight of utility rates in exchange for an untested new regulatory model. Since then, Arizona courts have clarified and confirmed legal barriers that would complicate or even prevent the adoption of retail electric competition in this state, given our unique Constitutional requirements. Meanwhile, the disappointing performance of retail competition in states that have embraced that model suggests that those legal barriers should remain unchallenged.

At this time, the Companies request that the Commission definitively halt its consideration of retail electric competition and declare that such restructuring would not serve the best interests of Arizona residents and businesses. Such a declaration would restore confidence in the stability of Arizona's regulatory climate, allowing the Companies and other regulated utilities to continue planning for a future of providing safe, reliable and affordable service to our state's residents and businesses.