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ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

17 IN THE MATTER OF THE
18 COMMISSION'S INQUIRY INTO
19 RETAIL ELECTRIC COMPETITION

DOCKET NO. E-0000OW-13-0135

**GOLDWATER INSTITUTE,
AMERICANS FOR PROSPERITY-
ARIZONA, AND ROY MILLER'S
COMMENTS IN RESPONSE TO
OPPONENTS OF
RESTRUCTURING ARIZONA'S
ELECTRICITY MARKETS FOR
CHOICE AND COMPETITION**

23 The Goldwater Institute, a non-profit public interest educational organization,
24 Americans for Prosperity-Arizona, and Roy Miller, a ratepayer residing within the
25 exclusive service territory of Arizona Public Service, hereby offer the following
26 comments in response to the advocates of the current government-imposed, centrally-
27 planned monopoly system.
28

1 **Introduction**

2 As recently reported in the Wall Street Journal, even Mexico has recognized the
3 need to reform its own government-imposed, centrally-planned monopoly electricity
4 system. Wall Street Journal, *Mexico Proposes Opening Up Electric Sector to*
5 *Competition* (August 13, 2013), available at
6 <http://online.wsj.com/article/SB10001424127887324085304579010993985696728.html>.
7
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9 Pointing to the lower prices in restructured electricity markets in the United
10 States, the President of Mexico has determined free markets “could unlock the vast
11 potential for manufacturing growth in Tijuana and the rest of northern Mexico.” San
12 Diego Union Tribune (August 15, 2013), available at
13 [http://www.utsandiego.com/news/2013/aug/15/mexicos-president-brings-light-to-long-](http://www.utsandiego.com/news/2013/aug/15/mexicos-president-brings-light-to-long-economic/all/?print)
14 [economic/all/?print](http://www.utsandiego.com/news/2013/aug/15/mexicos-president-brings-light-to-long-economic/all/?print).
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16 If Arizona fails to similarly liberate its electricity markets, there is a real risk that
17 not only Texas, but now the *second world country of Mexico*, will pass it by in the
18 economic race among states and nations. While dynamic free markets in electricity
19 emerge all around us, it is increasingly unwise to maintain a cumbersome regulatory
20 system that crushes choice, competition and innovation, which was devised more than a
21 century ago.
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24 The following responses represent our answer to the opponents of free markets in
25 electricity. Advocates of the *status quo* have raised essentially five objections to
26 liberating Arizona’s electricity markets from current government-imposed, centrally-
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1 planned monopoly system. All of these objections boil down to falsehoods, misleading
2 statements, half-truths and fear-mongering.

3
4 First, restructuring Arizona's electricity markets for choice and competition is
5 fully constitutional and consistent with all current precedent in the State of Arizona.
6 Second, in Texas, there is no question that consumers and businesses are benefitting
7 from lower prices, as well as increasing consumer satisfaction from a wider array of
8 plans and services because of choice and competition in electricity. Third, there is no
9 genuine capacity or reliability problem in Texas that has arisen from free markets in
10 electricity. Fourth, there is no risk of a "federal takeover" from adopting the Texas and
11 Pennsylvania model of electrical choice and competition. Fifth, there is no risk to the
12 viability of the Four Corners or NGS facilities from adopting the Texas and
13 Pennsylvania model of electrical choice and competition.
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16 **Responsive Comments**

17
18 **I. Restructuring Arizona's electricity markets for choice and competition is**
19 **fully constitutional and consistent with all current precedent in the State of**
20 **Arizona (previously addressed in answer to Question 13).**

21 The utility monopoly advocates are misrepresenting the actual state of the law in
22 contending that the Arizona Constitution stands against choice and competition in
23 electricity. First of all, it is clear that the regulation of public service corporations can be
24 governed by market pricing, choice and competition, rather than centrally-planned
25 monopoly franchising and rate-setting. This was made clear over a decade ago when the
26 telecommunications industry in Arizona was restructured for market competition. The
27 same legal principles apply in the restructuring of the electricity industry.
28

1 Second, the utility monopolies cannot claim a constitutionally protected right to
2 maintain their monopolies. *Phelps Dodge* specifically ruled the Arizona Constitution
3 “does not confer any right to exclusively sell electricity.” *Phelps Dodge Corp. v. Ariz.*
4 *Elec. Power Coop., Inc.*, 207 Ariz. 95, 121 (Ariz. Ct. App. 2004).

6 Third, the constitutional need to consider “fair value” in performing the ACC’s
7 job of ratemaking does not prevent competitive pricing in Arizona’s electricity markets.
8 Simply put, the weight given to “fair value” of a utility’s local assets in a monopoly
9 context does not determine the weight given the “fair value” of a utility’s local assets in
10 a competitive market.

12 In *U.S. West Communications, Inc. v. Arizona Corp. Comm’n*, 201 Ariz. 242, 34
13 P.3d 351 (2001), the Arizona Supreme Court made the following controlling ruling:

15 We still believe that when a monopoly exists, the rate-of-return method is
16 proper. Today, however, we must consider our case law interpreting the
17 constitution against a backdrop of competition. In such a climate, there is
18 no reason to rigidly link the fair value determination to the establishment
19 of rates. We agree that our previous cases establishing fair value as the
exclusive rate base *are inappropriate for application in a competitive
environment.*

20 *Id.* at 246 (emphasis added). This ruling was embraced by the Court of Appeals in
21 *Phelps Dodge*, which also reiterated the Supreme Court’s holding that the “Commission
22 has broad discretion in determining the weight to be given” fair value of a utility’s
23 assets. *Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 207 Ariz. 95, 106 (Ct. App.
24 2004).

26 The Commission is thus fully empowered to set no weight or a very low weight
27 to the “fair value” of a utility’s assets in exercising ratemaking authority in the context
28

1 of a competitive electricity market. As explained by the Arizona Supreme Court in *U.S.*
2 *West Communications, Inc.*, the purpose of considering the “fair value” of a utility’s
3 assets is to prevent a “confiscatory taking of a company’s property.” 201 Ariz. at 246. In
4 a free and competitive market following the Texas or Pennsylvania model, only the
5 “provider of last resort” will be at theoretical risk of confiscatory service requirements.
6 All other market players will have no such risk. For them, there is no reason to assign
7 any weight or any significant weight to the “fair value” of their property.
8
9

10 Without any significant weight assigned to the “fair value” of a competitive
11 market player’s local property, that means that the lower bound for electricity rates will
12 be zero or close to zero, allowing for market pricing of electricity to go as low as
13 competition drives it. This would benefit consumers immensely over the current
14 monopoly model. Rather than guaranteeing a minimum level of profits and cost recovery
15 to monopoly utilities, in a competitive market, ratemaking will thus have the primary
16 impact of setting an upper bound to prevent price gouging. Not surprisingly, the *Phelps*
17 *Dodge* court specifically embraced the idea of a “rate range” with a lower and upper
18 bound determined by ratemaking, and competitive market pricing determining the
19 specific rate within that bound. 207 Ariz. at 108-10. The Court of Appeals ruled:
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23 Nothing in the plain language of Article 15, Section 3 requires the
24 Commission to prescribe a single rate rather than a range of rates.
25 Moreover, our supreme court has held that the Commission has discretion
26 to adopt various approaches to fulfill its functions, “as long as the method
27 complies with the constitutional mandate and is not arbitrary and
28 unreasonable.” Consequently, assuming the Commission establishes a
range of rates that is “just and reasonable,” the Commission *does not*
violate Article 15, Section 3 *by permitting competitive market forces to set*
specific rates within that approved range.

1
2 *Id.* at 109 (emphasis added and citations omitted). Of course, the Commission
3 must be careful not to set an upper bound that is arbitrarily high—like the
4 ridiculously high \$25 per kilowatt/hour rate struck down in *Phelps Dodge*.
5 Instead, it is recommended that the Commission set the upper bound based on
6 outlier pricing found in the national marketplace.
7

8 Fourth, and finally, the utility monopolies cannot claim any substantive
9 constitutional protection against divestiture (keeping in mind that firewalling is an
10 alternative to divestiture). When discussing Arizona's previous rules mandating
11 divestiture, the *Phelps Dodge* court determined that the commission *could* require utilities
12 to sell generation assets in order to avoid an unfair market advantage accruing to them
13 from their past monopoly position. *Phelps Dodge Corp.*, 207 Ariz. at 114. The Court
14 ruled:
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17 We conclude that the Commission can permissibly require an Affected
18 Utility that chooses to transfer competitive assets to an affiliate to do so at
19 a fair and reasonable price, as determined by the Commission. If such
20 assets were transferred for an unfair price, the affiliate could gain an unfair
21 advantage in the competitive market by being able to charge rates that are
22 not needed to cover the cost of the assets. Thus, such a provision is aimed
23 at controlling rates rather than controlling the Affected Utilities *and is*
24 *therefore permissible.*

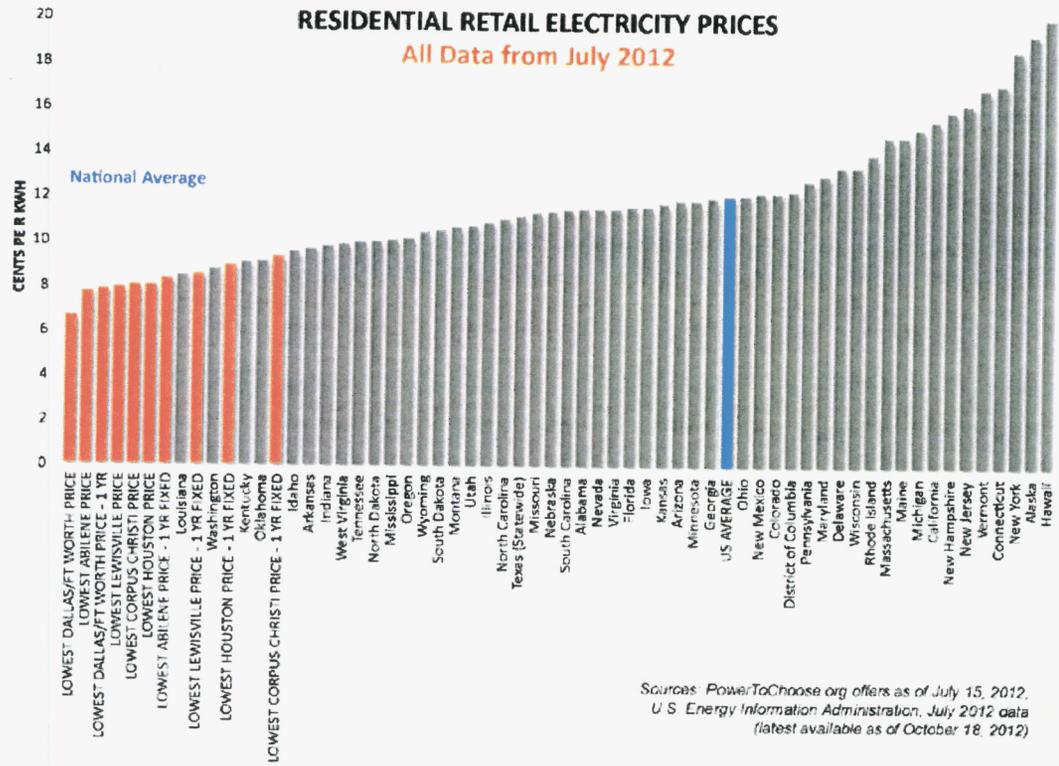
25 *Id.* (emphasis added). In view of this ruling, *Phelps Dodge* court struck down rules
26 requiring divestiture of generation assets *solely* because the Commission failed to create
27 a record establishing why such divestiture was required to have a competitive market for
28 rates, rather than simply relying upon firewalling. *Id.* It appears the Court was
specifically concerned about requiring divestiture of generation assets used for export of

1 electricity. Implicit in this reasoning is that the ACC has the authority to promulgate
2 divestiture rules as long as a proper record is made justifying such rules. Divestiture may
3 be rationally preferred to firewalling if the ACC finds that the resources do not exist to
4 supervise and enforce adequately firewalling to prevent collusion or the indirect
5 subsidization of components of a former monopoly utility.
6

7
8 **II. There is no question that consumers and businesses are benefitting from**
9 **lower prices, as well as greater consumer satisfaction from a wider array of**
10 **plans and services because of choice and competition in electricity**
11 **(responsive to Questions 1, 2, and 3).**

12 The utility monopolies and their friends ignore and misconstrue the
13 overwhelming evidence showing that lower prices, customer choices and customer
14 satisfaction follow from robust market competition. First of all, in its January 2013
15 Report to the Texas Legislature, the Texas Public Utility Commission clearly reported
16 that lower prices were the norm throughout the competitive areas of the state. It
17 specifically found, “every competitive area in Texas has variable and one-year fixed
18 rates that are up to three cents per kWh below the national average,” furnishing as an
19 illustration the averages from July 2012 (Figure 1).
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Figure 1



Additionally, the Texas PUC reported that customer complaints regarding electricity service were as much as 65% lower in 2012 than in 2011, and lower than customer complaints regarding telephone service (Figure 2). Only five percent of the complaints had anything to do with service quality.

1 Figure 2



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12 Finally, the Texas PUC found that 114 competitive residential providers were seeking to
13 serve customers with hundreds of service products as of August 2012 (Figure 3).
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15 Figure 3

Transmission and Distribution Utility	Number of REPs Serving Residential Customers (Incl. affiliated REPs)	Number of Residential Products	Number of Products with 100 % Renewable Content
Oncor	45	258	62
CenterPoint	47	275	63
AEP TCC	44	251	62
AEP TNC	40	234	58
TNMP	40	237	63
Sharyland	10	41	10

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24 Below (Figure 4) is an actual screen shot from a “free evenings” plan available in Texas.
25 “Free” electricity is obviously preferable to any time-of-day plan offered by Arizona’s
26 monopoly utilities. Figure 5 is a screen shot from a “choice” consumer education
27 marketplace.
28

1 Figure 4

TXU energy

Switch Today and Save at Night!
Free Nighttime Energy Charges Between 10pm and 6am.

Enjoy Free Nighttime Energy Charges — All Night, Every Night
All New Texas

Energy Facts Label

Switch Today and Save at Night

Free Nighttime Energy Charges — All Night, Every Night
All New Texas

Getting an Automatic Account Just Got Easier.

- ✓ Automatic billing so you never miss a payment
- ✓ Automatic payment that makes it easier to pay your bill
- ✓ Automatic enrollment in the TXU Energy Rewards program

17 Figure 5

Texas Electric Choice
EDUCATION PROGRAM

ELECTRICITY BASICS | WHY SWITCH | COMPARE RETAIL OFFERS

AVAILABLE OFFERS

All | Fixed | Variable | Indexed | Promotional Offers | Prepaid

279 Records Found

Compare	Retail Electric Provider	Avg Price/kWh (1,000 kWh)	Cost per 1,000 kWh	Rate Type	Renewable Energy Content	Term (Mo.) Cancellation Fee
<input type="checkbox"/>	ACHange Energy Charitable Saver Monthly Electricity Facts Label Terms of Service Special Terms Sign Up	7.14	\$73.00	Variable	9%	1 None
<input type="checkbox"/>	ACHange Energy Charitable Saver 12 Electricity Facts Label Terms of Service Special Terms Sign Up	9.34	\$88.00	Fixed	9%	12 \$20 per month remaining
<input type="checkbox"/>	ACHange Energy Charitable Saver 3 Electricity Facts Label Terms of Service	6.84	\$68.00	Fixed	9%	3 \$20 per month

1 Notwithstanding the reality on-the-ground in Texas, which is discussed above,
2 APS claims that electricity price increases in restructured states are due to restructuring
3 (p. 23 of APS reply to questions). The Commission should pay careful attention to the
4 graphic on page 23 of APS's reply to questions. Note that the major fluctuation in
5 average electricity prices in the specific states illustrated, which are not all of the
6 restructured states in the United States, and the fluctuation in average U.S. electricity
7 prices, follow fluctuations in the price of natural gas. Texas' average electricity price
8 before 2006 rose precipitously only because natural gas is the biggest source of electric
9 generation power in that state. As the price of natural gas has come down, Texas
10 electricity prices are once again much lower than the average in the U.S. But not only
11 are electricity prices down due to natural gas becoming relatively cheap, *prices have*
12 *been driven down by competition*. In Texas, some consumers can sign up for plans to get
13 their electricity on weekends for free. Others can sign up for evenings free (Figure 4). As
14 discussed above, there are electricity rate plans that are priced less than the lowest state
15 average in the nation (Figure 2).

20 Another utility monopoly, TEP, raises the specter of market manipulation in
21 restructured electric markets (p. 11 of TEP reply to questions). It is telling that TEP
22 raises this issue, alleges restructuring is rife with these market manipulation issues, and
23 then proceeds to give only *five examples*, effectively from only three different states.
24 Three examples involve California, the worst possible example of market restructuring
25 in the nation and hardly worthy as being considered an example. Congressional Budget
26 Office, *Causes and Lessons of the California Electricity Crisis* (Washington, D.C.:

1 Congress of the United States, September 2001), 18,
2 <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/30xx/doc3062/californiaenergy.p>
3 df. One is from Nebraska. One is from New York. None are from Pennsylvania or
4 Texas, the gold standards of restructuring. The TEP remarks should be well taken as an
5 argument of why restructuring must be done correctly and must be staged in its
6 implementation. They should not be taken as a reason not to restructure. Currently
7 monopolized markets see manipulations sanctioned by FERC *all the time*.
8

9
10 Lastly, it should not be forgotten that there will be a “Provider of Last Resort”
11 (POLR) that provides a default price for consumers that do not actively engage the
12 competitive market. No one will be left behind. The utility monopoly, SRP, clearly
13 anticipating being a Provider of Last Resort, acts as if the POLR is put in a precarious
14 position so risky as to put restructuring as a whole at risk (p. 23 of SRP reply to
15 questions).¹ SRP seems to envision POLRs being designated in an almost confiscatory
16 relationship to a restructured system. In Texas, however, the POLR has the right to
17 charge a non-confiscatory rate for electricity. In fact, companies bid for the right to be
18 the POLR. More often than not, incumbent firms become the POLR but this is not
19 universally the case. It is a desired opportunity, not a burden. And to prevent the POLR
20 from undermining competition, the POLR is required to communicate to consumers
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25 ¹ Indeed, SRP appears to have an entirely mistaken notion of the nature of a POLR, the
26 price to beat, and the risks POLRs face. The “price to beat” in Texas, which expired
27 around 2007, finally liberating the retail market entirely, had little to do with POLRs.
28 The “price to beat” was a floor below which incumbent (pre-restructuring) firms could
not drop their prices. The price the POLR could charge to abandoned or no-choice
consumers was higher than the price to beat.

1 assigned to the POLR about that company's cheaper rate plans (if any) and the fact that
2 there are other companies from which the consumers may choose. This ensures that the
3 market remains lively, mobile and robust, ensuring competition continues.
4

5 **III. There is no genuine capacity or reliability problem in Texas or Pennsylvania**
6 **that has arisen from free markets in electricity.**

7 The monopoly utility APS raises the specter that Texas is running out of electric
8 generation capacity with reliability being threatened (p. 22 of APS reply to questions).
9 There is no denying that Texas' excess generation capacity has fallen in recent years.
10 The operative word, however, is "excess." Despite the scary scenarios being bandied
11 about, the fact is that there has yet to be even one brownout or blackout as a result of
12 inadequate generation capacity in Texas. One incident when generators were affected in
13 winter as a result of severe weather is cited as an example of Texas' inadequate capacity.
14 If this is the standard, then every instance of a power loss due to high winds in Arizona
15 should be cited as an example of our inadequate capacity. This is, of course, absurd on
16 its face.
17
18

19 The fact is that Texas' electricity reserves are largely a result of its enviable
20 economic growth, which has taken place in a remarkably short period of time owing to
21 the relatively poor economic state of the rest of the country. Electric restructuring, if it is
22 the hindrance that opponents would have us believe, *is clearly not much of a hindrance.*
23
24 But in fact, electric restructuring in Texas is just one more example of the can-do,
25 business-friendly, minimalist-government philosophy that prevails in that state.
26
27
28

1 The alleged threat of future blackouts due to inadequate capacity investment in Texas
2 fails to consider several issues.

3
4 First, there are a number of mothballed electricity plants in Texas that, though
5 they are old, can be restarted if necessary, many being fired by natural gas. Generation
6 companies are not immediately decommissioning these plants for the very reason that
7 they are holding them in reserve.

8
9 Second, the projections showing shrinking generation capacity in Texas have
10 been wrong in the past. In fact, projections from 2005 estimated reserves by 2010 of less
11 than 15 percent; they ended up being over 20 percent. The 2007 projection estimated
12 reserves by 2012 at about 6 percent; they ultimately reached almost 15 percent. Andrew
13 Kleit and Robert J. Michaels, *Require Capacity Markets? The Texas Experience* (Austin,
14 TX: Texas Public Policy Foundation, February 2013), 13, available at
15 [http://www.texaspolicy.com/sites/default/files/documents/2013-01-RR02-](http://www.texaspolicy.com/sites/default/files/documents/2013-01-RR02-ResourceAdequacyElectricityMarkets-CEF-RMichaelsAKleit.pdf)
16 [ResourceAdequacyElectricityMarkets-CEF-RMichaelsAKleit.pdf](http://www.texaspolicy.com/sites/default/files/documents/2013-01-RR02-ResourceAdequacyElectricityMarkets-CEF-RMichaelsAKleit.pdf).

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18
19 Generators want to make profits in markets where there is demand for generation.
20 They have a very strong incentive to install capacity in order to generate those profits. In
21 temporary situations where there might be some lag in increasing generation due to the
22 fact that large investments are made in a stepwise fashion, prices rise for a time to help
23 mitigate demand and signal that it is time to build new plants. Increasingly, there are
24 sophisticated demand management technologies available that will provide benefits to
25 consumers who agree to curtail usage during peak use periods. The fact is that in any
26 growing economy, those with a central planner's mindset can point to concerns about
27
28

1 future shortages of everything from grocery stores to lawn services, yet the market
2 always finds a way to provide, as long as government regulation stays out of the way.

3
4 **IV. There is no risk of a “federal takeover” from adopting the Texas and**
5 **Pennsylvania model of electrical choice and competition.**

6 The utility monopoly APS says “The Commission will Relinquish Jurisdiction to
7 the Federal Energy Regulatory Commission (FERC) (p. 1 of APS comments summary).

8 This assertion is not true. First of all, the FERC is an ever-present actual or potential
9 regulator of electricity markets regardless of whether Arizona chooses to adopt free
10 markets in electricity. This is because electricity is a product that crosses state lines and
11 the grids themselves serve as instrumentalities of interstate commerce. An originalist
12 understanding of the Commerce Clause would fully embrace the federal government’s
13 regulatory authority over modern electricity markets. That authority will exist with or
14 without restructuring.
15
16

17 The choice to restructure triggers a new role for FERC that consists essentially of
18 approving the creation of an ISO/RTO according to eleven principles, all of which are
19 aimed at ensuring the grid is not operated to prevent free and open competition.² 4-89
20

21
22 ² Principle 1. “The ISO’s governance should be structured in a fair and
23 nondiscriminatory manner.” Principle 2. “An ISO and its employees should have no
24 financial interest in the economic performance of any power market participant. An ISO
25 should adopt and enforce strict conflict of interest standards.” Principle 3. “An ISO
26 should provide open access to the transmission system and all services under its control
27 at non-pancaked rates pursuant to a single, unbundled, grid-wide tariff that applies to all
28 eligible users in a non-discriminatory manner.” Principle 4. “An ISO should have the
primary responsibility in ensuring short-term reliability of grid operations. Its role in this
responsibility should be well-defined and comply with applicable standards set by
NERC and the regional reliability council.” Principle 5. “An ISO should have control
over the operation of interconnected transmission facilities within its region.” Principle

1 Energy Law and Transactions § 89.03 (citing FERC Order No. 888). In applying these
2 principles, the FERC seeks to determine whether an ISO/RTO fulfills four minimum
3 characteristics³ and performs eight minimum functions,⁴ all of which are aimed at
4 ensuring a workable grid system. *Id.* (citing Order No. 2000). These are principles that
5 should be at the forefront of the Commission's mind in the course of restructuring and
6 they do not represent an abuse of federal power whatsoever.
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11 6. "An ISO should identify constraints on the system and be able to take operational
12 actions to relieve those constraints within the trading rules established by the governing
13 body. These rules should promote efficient trading." Principle 7. "The ISO should have
14 appropriate incentives for efficient management and administration and should procure
15 the services needed for such management and administration in an open competitive
16 market." Principle 8. "An ISO's transmission and ancillary services pricing policies
17 should promote the efficient use of and investment in generation, transmission, and
18 consumption. An ISO or an RTG of which the ISO is a member should conduct such
19 studies as may be necessary to identify operational problems or appropriate expansions."
20 Principle 9. "An ISO should make transmission system information publicly available on
21 a timely basis via an electronic information network consistent with the Commission's
22 requirements." Principle 10. "An ISO should develop mechanisms to coordinate with
23 neighboring control areas." Principle 11. "An ISO should establish an ADR process to
24 resolve disputes in the first instance."

25 ³ 1. Independence; 2. Appropriate geographic scope and regional configuration; 3.
26 Operational authority for all transmission facilities under the RTOs control; and 4.
27 Exclusive short-term reliability authority.

28 ⁴ 1. Transmission tariff development and administration that will promote efficient use
and expansion of transmission and generation facilities; 2. Develop congestion
management procedures; 3. Develop and implement loop flow and parallel path
procedures; 4. Serve as the provider of last resort for all ancillary services; 5. Operate a
single Open Access Same Time Information System (OASIS) for all transmission under
its control and be responsible for independently calculating [sic] TTC and ATC; 6.
Monitor markets to measure market power and market design flaws and propose
remedies; 7. Plan and coordinate necessary transmission upgrades and additions,
including coordinating its efforts with State regulators; and 8. Develop mechanisms to
coordinate its activities with other regions, whether or not an RTO exists in those
regions, especially concerning reliability and market interfaces.

1 Indeed, the current FERC regulations show that FERC is relatively pre-disposed
2 in favor of free market activity. The ACC is more likely to follow policies that run
3 counter to FERC under the status quo top-down monopoly system. Every day that our
4 obviously protectionist, anti-competitive monopoly system exists is another day that
5 invites even more aggressive federal intervention—of the kind fully authorized under the
6 original meaning of the U.S. Constitution.
7
8

9 Relatedly, although APS says “There is no Promising RTO Solution for Arizona”
10 (p. 16 of APS comments summary), the promise of electricity restructuring is that an
11 RTO solution will be found – of necessity. No one thinks the establishment of an RTO
12 would be easy. However, in its reply, APS admits that it is already highly integrated with
13 SRP. Then, in the same remarks it states that establishing an RTO would make
14 integrating with SRP more complex. These statements contradict each other. The truth is
15 that APS makes generation capacity available to that wider grid all the time and flows
16 are coordinated and balanced just as they are within the state’s grid all the time. Every
17 utility has its own balancing authority managed by talented people who can be integrated
18 into a single overall system. If anything, such existing integration gives restructuring a
19 real leg up when it comes to designing an RTO.
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23 The bottom line is that expertise in establishing and running an RTO now exists
24 in our state, and in the country; and it can be called on as necessary to assist in
25 organizing the best way to coordinate and schedule power in a restructured, competitive
26 electric system. Just as Texas has learned, the grid might have to be restructured to some
27 extent into a nodal system, but this will make the state’s electrical grid all the more
28

1 efficient and less costly, with all the economic benefits that will accrue. But in order to
2 justify the resource investment to lay out the specifics of an RTO in granular detail, the
3 Commission should first give rulemaking a green light. Moving forward with
4 rulemaking does not commit the Commission to the rules, it only makes it sensible to
5 marshal the resources to develop them.
6

7
8 **V. There is no risk to the viability of the Four Corners or NGS facilities from**
9 **adopting the Texas and Pennsylvania model of electrical choice and**
10 **competition based on the Goldwater Institute's proposal.**

11 Tremendous fear-mongering has been engaged in relative to the viability of the
12 Four Corners or NGS facilities in a competitive marketplace. There is no basis for this
13 concern. All proponents of the transition to free markets in electricity recognize that
14 burdensome EPA regulations have made the status of these facilities a special case that
15 warrants special treatment. All proponents of the transition to free markets in electricity
16 recognize that a loss of capacity from these facilities would likely delay implementation
17 of retail competition out of the necessity of ensuring the wholesale market was
18 sufficiently robust. That is why the undersigned has already proposed working with
19 stakeholders to advance tax credit relief in Congress or the state legislature for
20 regulatory costs or otherwise to allow for regulatory cost recovery through grid
21 surcharges. The ball has been in the court of NGS and Four Corners facility operators
22 since July 15, 2013 to work together on advancing one or the other of these proposed
23 solutions. It is highly recommended that the Commission make similar assurances in
24 giving a green light to rulemaking and moving forward to choice and competition in
25 electricity.
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Conclusion

1
2 In their filings before the ACC regarding electric industry restructuring and
3 competition in Arizona, the utilities appear to have the idea that their regulated
4 monopoly position is economically more efficient and preferable to restructuring. While
5 their line of argument is entirely understandable given their current advantageous,
6 monopolistic positions, it is entirely inconsistent with economic reasoning and empirical
7 results from deregulating other industries.
8
9

10 There is an extensive literature regarding monopoly and regulation that arose
11 largely out of the AT&T breakup that extended into the 1980s. Issues regarding
12 regulation, monopoly, and restructuring of a regulated utility were all addressed at that
13 time, decades ago. Recent experiences in other states and internationally with electric
14 restructuring have served to confirm the AT&T research and exonerate economists on
15 the side of competition.
16
17

18 First, it must be recognized that economists who advocate electric restructuring,
19 such as Nobel Prize winner Vernon Smith, acknowledge that there is a natural monopoly
20 in the provision of an electric grid. No one has suggested that the grid be competitively
21 provided although private, regulated ownership remains the recommended course of
22 action.
23

24 Second, while economists have long recommended that natural monopolies be
25 maintained and regulated for the sake of efficiency and reduced cost, economists have
26 also long recognized the shortcomings of regulation. These include regulatory capture
27 where regulated companies succeed in "capturing" regulatory agencies and regulation
28

1 skews in favor of the regulated companies. In addition, regulated companies have an
2 informational advantage over the regulators and this asymmetry creates an advantage for
3 the regulated companies. Consequently, economists anxiously jump at the chance to
4 restructure and deregulate where changes in technology make it possible. Good
5 examples of this include the restructuring of telecommunications and air travel.
6

7
8 Third, monopolies are always inefficient when competition is an alternative.
9 Monopolies under produce their product compared to an efficient level of production in
10 order to drive price above the competitive and efficient price. Monopolies enjoy
11 monopoly profits as a consequence of their excess pricing. This is not necessarily
12 evident in cost filings, though, because monopoly management often see monopoly
13 profits as an opportunity to pay themselves excessive salaries and perks in addition to a
14 tendency to manage the firm less tightly simply because there is less pressure to do
15 otherwise. Due to these factors, economists generally opt for competitive enterprise
16 wherever possible.
17
18

19 Texas, Pennsylvania, and Great Britain, among others, have conclusively shown
20 that generation and retail in the electricity market is possible and that it can operate
21 efficiently, with prices matching or undercutting prices that prevail in a regulated
22 monopolistic regime. Generation investment decisions are more efficiently made.
23 Finally, regulators of the grid natural monopoly are better focused on the quality of that
24 important factor in electricity provision. Clearly, a restructured electricity market in
25 Arizona will be superior to the current vertically integrated regulated monopoly.
26
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28

1 **NOTICE OF FILING AND PROOF OF SERVICE**

2 **ORIGINAL** and 13 copies were filed this 16th day of August, 2013 with:

3
4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, Arizona 85007

8 **ADDITIONALLY**, one copy of the foregoing will be placed for service on each of the
9 following docket service list entities on ~~July 15,~~ ^{August 16,} 2013 by U.S. Mail, sufficient postage
10 prepaid, at the specified address:

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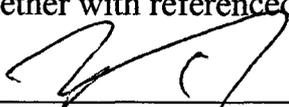
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18 Under penalties of perjury as provided by law, I affirm that I caused to be placed for
19 filing and service the instant document together with referenced exhibits as aforesaid.

20 
21 _____
22 Nicholas C. Dranias