Arizona Public Service Company's Comments to the Electric Competition Advisory Group

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Table of Contents

Table of Contents **1**

I. Introduction **3**

II. Fundamental Principles **5**

III. Retail Electric Competition Policy **6**

A. Original Goals and Objectives of Retail Electric Competition in Arizona 6
B. Retail Electric Competition in Other States 7
C. Arizona's and APS' Experience with Retail Electric Competition 8
D. How Should the Commission Evaluate the Concept of Retail Electric Competition Arizona? 10

IV. General Issues Regarding the Current Retail Electric Competition Rules **12**

A. Affected Utility Obligations 12
1. Separation of Monopoly and Competitive Services and Self-Build Option 12
2. Competitive and Non-Competitive Services 14
3. Must-Run Generation 15
B. Competitive Bidding For Standard Offer Load 16
1. Need to Preserve Load Serving Flexibility 16
2. Wholesale Market Development 16
3. Need for Pre-approval of Long-Term Contracts 17
4. Need for Timely and Full Cost-Recovery 18
C. Environmental Issues 18
D. In-State Reciprocity 19
1. CC&N Integrity 19
2. Municipalization 20
3. Jurisdiction Over Merchant Generators 21
E. Transmission Issues 21
1. AISA 21
2. RTO Development 22
3. Standard Market Design 22
F. Code of Conduct Requirements 22

V. Environmental Portfolio Standard **24**

VI. Power Plant and Transmission Line Siting Act **25**

VII. Conclusion and Recommendations **27**

Endnotes **28**

Status of Retail Electric Competition Throughout
The United States.. **Appendix A**

I. Introduction

In January 2002, the Commissioners initiated a comprehensive review of the Retail Electric Competition Rules through a series of letters and questions sent to interested parties. The first substantive result of that inquiry was the Track A decision, Decision No. 65154 (September 10, 2002). The Track A decision stayed the divestiture of APS' generation, as was previously required by the Retail Electric Competition Rules, and modified both the substance and process of wholesale competitive procurement required by those rules. That decision, however, did not broadly address many of the more fundamental policy questions on retail electric competition first raised by the Commissioners in early 2002.

A similar review of retail electric competition is occurring throughout the United States. Today, some of the states that first enthusiastically embraced retail electric competition are completely repudiating those decisions. Others are slowing down the pace of introducing retail choice. Yet others are apparently secure in their original decision not to pursue electric restructuring. It is fair to conclude that retail choice remains more a theoretical and philosophical abstraction today than a viable and widely-available alternative to the traditional vertically-integrated utility model. And in no jurisdiction, including Arizona, has retail choice proven to be an unqualified success in producing the benefits envisioned just a few years ago.

This lack of practical achievement may be attributed to structural design flaws in the particular state's restructuring plan—the most notable example of which is California, where both customers and utilities were punished for poor policy decisions. Market conditions have likewise not proven conducive to retail choice. The wholesale electric market has reeled from the cumulative impact of inadequate supervision and enforcement of market rules, poor regulatory design of such rules, accounting and related financial turmoil, and outright manipulation by some players. All of this has contributed to the kind of instability that has frustrated would-be competitors and incumbents alike. For residential and smaller commercial customers, transaction costs of retail choice have been more significant than first believed, as have been customer indifference and even outright resistance to switching from traditional providers. Where retail choice has shown some progress, it has often been at the expense of standard offer customers (such as Pennsylvania) or through government intervention in the exercise of "choice" (such as Texas and Maine).

APS does not believe that the Retail Electric Competition Rules should be continued in their present form. They have harmed the Affected Utilities and have not yet produced benefits to consumers. They cannot succeed in ever producing real benefits unless modified to address the core issues of reliability, cost responsibility, financial viability, comparability, and compatibility. Who is ultimately responsible for ensuring an adequate supply of electricity that can be reliably delivered to end-users and what means are permissible in meeting that responsibility? Who bears the cost of maintaining customer choice—those who choose to leave their traditional supplier, those who choose not to, or all customers? How is the financial integrity of the state's utilities preserved in this process? How can consumers and suppliers of competitive electric services be assured that all market participants are playing by the same rules, or are even playing in the same game? And how can the Retail Electric Competition Rules be

integrated into the ongoing events at the federal level? Like it or not, both the state and the federal government have a role in regulating the electric industry, which role can serve to either encourage or hinder the conditions necessary for meaningful customer choice.

APS does not pretend that solving the problems it has identified in its comments will be easy or quick. It does not presume to know all the answers. But unless and until the Commission addresses these core issues as best it can within whatever time frame is necessary for the task, meaningful retail customer choice will not be realized. Further, absent such action, Arizona consumers will continue to have neither the opportunities claimed by proponents of retail competition nor the security and stability of the traditional utility model to which they have become accustomed over the past century.

In the process of further reviewing competition policy through this proceeding and the Electric Competition Advisory Group (ECAG), APS asks the Commission to carefully consider and evaluate the experiences and assessments in other states regarding electric competition. It should look specifically to the lessons learned both here in Arizona and in other jurisdictions. The Commission should confirm whether, how, and when real and measurable benefits from competition can be realized in Arizona at an acceptable level of risk to consumers and to other policy objectives. And, the process used by the Commission in conducting this review and in moving forward should be both balanced and practical, and comply with the Arizona Administrative Procedures Act and other legal requirements. APS proposes in these comments certain fundamental principles that will aid in developing this process and addressing the core issues discussed above.

II. Fundamental Principles

In reviewing the Retail Electric Competition Rules, APS believes the Commission should focus on the goals underlying its electric competition policy and address the future of retail competition from a high-level policy perspective. This requires first an assessment as to whether retail competition is desireable at this time and, if so, in what form. Then, if necessary, the Commission should determine how its policy on retail choice can be achieved given existing legal constraints, practical issues relating to implementation, and the mutual obligations to protect customers and the financial integrity of public service corporations. Only after this top-down process occurs can meaningful specific steps and changes be identified to achieve this result.

In implementing this review, APS offers certain fundamental principles to help frame the analysis and the debate on the rules and competition policy:

- Any benefits of retail competition may be "lumpy" and likely will not be experienced by all customers—either at all or in equal measure in the same time horizon—and may come at the expense of other policy goals of the Commission.
- Competition cannot be made risk-free by regulation.
- The Commission should strive for simplicity and consistency in its regulation and avoid unnecessary complication where possible.
- Any new regulatory mandates should be subject to a comprehensive cost-benefit analysis to ensure that they actually will benefit customers without unintended adverse consequences or adverse impacts on regulated utilities.
- Regulatory mandates to Affected Utilities and Electric Service Providers (ESPs) should be clear, reasonably achievable, and developed in lawful proceedings with both sides of the regulatory compact unambiguously articulated and observed.
- Affected Utilities should have a reasonable opportunity to fully and timely recover the costs of doing business, and particularly costs incurred in response to specific Commission directives.
- The Commission's ability to effectively "regulate" both wholesale and retail competition and the environment is circumscribed by federal preemption of certain wholesale and interstate activities, federal or state regulation of environmental matters by other agencies with primary jurisdiction, and by the Commission's limited jurisdiction over public power entities and merchant generators.

III. Retail Electric Competition Policy

A. Original Goals and Objectives of Retail Electric Competition in Arizona

The Commission first began to consider retail electric competition in May 1994, when the Utilities Division Staff (Staff) initiated a generic investigation. In February 1996, Staff requested comments from parties on the issue of retail competition in Arizona. That request for comments articulated Staff's view of the goals for retail electric competition that had resulted from the first phase of the Commission's generic investigation, which concluded in 1995. Those goals were:

- Encourage the benefits of retail competition, including increased innovation and efficiency, holding prices down, responsiveness to customer demands, and customer choice among suppliers and products;
- Limit potential harm to utilities and utility investors;
- Enable a wide range of consumers to participate in a competitive retail market;
- Limit the potential for decreases in electric system reliability related to competition;
- Limit the potential for market impediments such as the exertion of retail market power by incumbent utilities which blunts competitive forces, and high retail transaction costs for market participants;
- Encourage a variety of retail market developments, including ESP contract development, ESP interconnection arrangements, spot market development, and retail rate unbundling;
- Promote renewable resources;
- Protect funding for important public policy programs, such as low income customer assistance and nuclear decommissioning; and
- Shield customers who do not or cannot participate in the competitive market from rate increases attributable to competition.[1]

After numerous public comment meetings and volumes of written comments on the proposed Retail Electric Competition Rules, the first set of such rules was adopted in late 1996 in Decision No. 59943 (December 26, 1996). Under these rules, retail direct access was to be phased-in starting in 1999. The initial rules, however, did not contain many of the provisions that proved particularly controversial or that were not directly related to retail competition which were added in later versions of the rules, such as required separation of competitive and non-competitive services, codes of conduct, mandatory competitive bidding for wholesale power supplies, or generation divestiture by incumbent utilities.

In 1998, a new set of Retail Electric Competition Rules was proposed and adopted, first on an interim basis in Decision No. 61071 (August 10, 1998) and then "permanently" in December 1998 on the eve of a new Commission taking office. These revised rules included a

mandatory divestiture provision, but included no requirement for competitive procurement and actually deleted the earlier Solar Portfolio Standard from the rules. The Solar Portfolio Standard was the precursor to the Environmental Portfolio Standard in today's rules.

In 1998, the Commission's focus on divestiture as a necessary component to its vision of retail competition was both clear and unambiguous. The debate at that time centered on whether the divestiture should be to a third party, should be conducted through an auction, or whether utilities should be allowed to divest to affiliates. In late 1998, the Executive Secretary of the Commission brokered a settlement of these and other contentious electric competition issues involving APS and Tucson Electric Power (TEP). That settlement, which was never ultimately heard by the Commission, provided that APS would acquire a portion of TEP's generation and then spin-off both that generation and its own to an unregulated subsidiary. APS also would divest its extra-high voltage transmission system (outside Metro Phoenix) to TEP.

Most of the provisions of the current Retail Electric Competition Rules were adopted in 1999 by Decision No. 61969 (September 29, 1999). The rules required the divestiture of all generation and the separation of competitive and non-competitive services. The rules as proposed by Staff still had no requirement for competitive acquisition of power needed for Standard Offer Service. Rule 1606(B), in its present form, was adopted at the open meeting when the rules were being voted on, primarily at the urging of two ESPs then involved in the deliberations—Enron and Commonwealth Energy Corporation—neither of which still conducts business in Arizona. The Retail Electric Competition Rules are currently under appeal at the Arizona Court of Appeals, having been found unconstitutional by a trial court.

At roughly the same time as the 1999 rules were adopted, APS and the Commission settled stranded costs and other issues related to the rules and their implementation, including the divestiture of APS' generation to an affiliate and the sale of power from such affiliate to APS. The Commission entered into that settlement in Decision No. 61973 (October 6, 1999). The settlement was affirmed on appeal. APS restructured and spent millions of dollars in compliance with that settlement and the rules.

Although this history shows that the Retail Electric Competition Rules underwent significant revision from the original 1996 version to the rules as adopted in 1999, there has been no formal modification of the original Commission policy goals expressed in early 1996. The question that should be considered at the threshold of any comprehensive review of the rules, however, is whether the Commission still embraces these goals and, if so, how to achieve those goals given events and increased national experience with retail electric competition over the last several years.

B. Retail Electric Competition in Other States.

Many, but far from all, states began to consider retail electric competition on the heels of the California Public Utilities Commission "Blue Book" report on the subject in 1994 and increasing wholesale electric competition following the passage of the federal Energy Policy Act of 1992. Today, almost a decade after the earliest undertakings in support of retail electric competition, there is a significant diversity of experience among different states. That experience

ranges from outright repudiation of retail competition in states like California and New Mexico, to changes in the scope of retail competition in states like Nevada, which limited direct access to certain large customers and only under certain conditions, to cautious optimism in a handful of states like Maine, Pennsylvania and Texas, although even in these states some critics contend that the true results are not yet known. A summary of the status of restructuring in the United States is provided in Appendix A.

A December 2002 General Accounting Office (GAO) report on the lessons learned from electricity restructuring[2] recognized the uncertain extent to which the goal of competitive electricity markets has been realized. The report concluded:

> It is not possible to determine the extent to which the goal of restructuring—the development of competitive markets—has been achieved to date. Our review of studies, our own analysis, and our evaluation of monitoring activities of electricity markets indicate a mixed picture of how much progress the industry has made in developing competitive markets and the extent to which expected benefits have been achieved. While some progress has been made in introducing competition, it has proven difficult to measure the benefits of restructuring, and where measurement has been possible, the extent to which expected benefits to restructuring have been achieved is unclear.[3]

The GAO report identified five issues and lessons learned that it believed require careful consideration in evaluating electric restructuring:

- Different rules apply to various electricity markets;
- Limited jurisdiction over participants restricts the effectiveness of restructuring efforts;
- Wholesale and retail markets have to be developed separately;
- Generation and transmission siting decisions subject to multiple jurisdictions affect restructuring; and
- Better monitoring of performance is needed to measure customer benefits.

Each of these issues and lessons applies to Arizona, to one degree or another, as well as to other state and federal efforts to develop electric competition.

C. Arizona's and APS' Experience with Retail Electric Competition

In Arizona, much has changed since the Retail Electric Competition Rules were adopted in 1999. Neighboring states are retreating from the goal of retail choice, and California and most of the Western United States have suffered an "energy crisis." The Commission has halted the separation of generation from Affected Utilities as originally required by the Retail Electric Competition Rules, and has revised and is implementing a large-scale experiment in regulated wholesale competitive procurement under the Track B solicitation process. Nonetheless, there has been significant construction of new generation capacity in Arizona, and new transmission

lines are being built into the Phoenix area and to interconnect new generation to the transmission grid.

Although the "phase-in" of retail choice was completed over two years ago, few Arizona customers have actually opted for direct access service. Like most other states, Arizona currently has no customers currently taking retail direct access service. This is not a recent trend—since retail direct access began to be phased-in within APS' service territory, no more than about 600 end-users actually switched to direct access, and all have since returned to Standard Offer service. Most customers in Arizona that went to direct access for at least some period of time were either relatively large customers such as the University of Arizona or national chains such as supermarkets. No residential customers have opted for direct access service. It is possible that the rate reductions implemented under its settlement agreement was a factor in many APS customers choosing to stay with Standard Offer service.

There are at present six ESPs that have been certificated in Arizona to supply generation or aggregation services.[4] There are also four certificated Meter Service Providers or Meter Reading Service Providers.[5] Although these suppliers are authorized to provide service, to APS' knowledge no supplier is currently actively marketing "Competitive Services," as defined by the Retail Electric Competition Rules. But, at least two of these suppliers are providing energy management and consulting services, and one has been active in co-generation and district cooling.

Despite the fact that there are presently no direct access customers, over the past four years utilities, ESPs, and Staff have laid significant groundwork at considerable expense. The Process Standardization Working Group—which was established to streamline technical implementation of the Retail Electric Competition Rules by addressing matters relating to such activities as billing, metering standards, data interchange, meter reading protocols and certain policy issues—has met almost 20 times since 2001. Since the group was formed, almost 150 discrete issues were identified and most have been resolved through the collaborative efforts of those involved. Additionally, incumbent utilities have spent significant amounts of money and effort to develop internal practices for retail direct access, to acquire the necessary systems and hardware, and to otherwise comply with the Retail Electric Competition Rules. For APS, these efforts range from broad corporation-wide restructuring to satisfy the rules to the far more specific development of such things as Direct Access Service Request (DASR) forms, electronic processing systems, and generation settlement systems.

At present, however, the principal regulatory focus is less on retail customer choice than on wholesale competition in generation supply. In addition to the recent Track B ruling on competitive procurement of certain Standard Offer generation requirements in Decision No. 65743 (March 14, 2003), there has been significant interest expressed in FERC's Standard Market Design proceeding involving wholesale competition from a federal perspective. In that proceeding, the Commission has asked FERC to develop wholesale competition through individual RTO orders rather through a "cookie cutter" approach that applies to the whole country.[6]

D. How Should the Commission Evaluate Retail Electric Competition in Arizona?

In conducting this review of the Retail Electric Competition Rules, the Commission should focus on fundamental policy issues first. At present, the result of the Track A and Track B orders, and the lack of response by customers to direct access service, has clouded the policy behind retail choice and introduced significant inconsistencies. For example, the Track A order requires APS to retain generation that was to be divested under the rules. The Track B order requires APS to solicit for a significant amount of generation for Standard Offer customers through an untested and constrained competitive bid process. But the current rules leave open the risk that after APS acquires power supplies for its Standard Offer customers (whether through existing assets or contracts), those customers might leave the system and shift the costs incurred onto remaining customers. On the other hand, if few or no customers leave APS for direct access, APS still must maintain in place the systems, processes, and personnel necessary to allow retail competition even though the cost of this competitive infrastructure is borne only by Standard Offer customers.

Also inconsistent today is the regulatory treatment of the wholesale power procurement process. The Track B order stated that the responsibility for wholesale procurement was "squarely in the lap" of the utility. However, the Track B order divested the utility of significant discretion in its procurement practices and effectively limits the ability of utilities to manage their wholesale procurement risk. With wholesale procurement, APS believes that there are ultimately two possible policy choices: The Commission should either permit utilities to procure resources as they have historically and measure the prudence of those choices in rate cases, or it could specify the details of the procurement process but provide for contemporaneous review and approval of contracts and full and timely recovery by the utilities of the associated costs. The current process unfairly allocates risk to the utility.

Ultimately, all of these issues should be considered in the appropriate context. The questions that APS believes should be the focus of the analysis include:

- Are the benefits expected by the Commission from retail choice—increased innovation and efficiency, lower prices, responsiveness to customers, and choice of products and suppliers—achievable and are they commensurate with associated costs and risks at this time?
- Is retail and wholesale competition being developed in a way and at a pace that both benefits customers and limits harm to utilities?
- What specific obligations do Affected Utilities and ESPs have, how are they expected to meet them, and how will they be compensated?
- How are jurisdictional conflicts or deficiencies to be resolved or overcome, including in particular issues relating to public power and special purpose districts?
- How can the Commission legally and practically develop or promote the wholesale competitive market and what specific obligations do Affected Utilities have in this matter?

- How can the Commission legally and practically address environmental issues and what specific obligations do Affected Utilities have in this matter?
- What affiliate conduct requirements are appropriate while not overly burdening Affected Utilities?
- How should the legal infirmities to the rules identified in the Maricopa County Superior Court decision in *Tucson Electric Power v. Arizona Corporation Commission* be addressed?

Some of these issues are discussed in more depth in these comments. All of these issues should be subject to thorough consideration under the fundamental principles discussed above.

IV. General Issues Regarding the Current Retail Electric Competition Rules

A. Affected Utility Obligations

The current Retail Electric Competition Rules were drafted with the understanding that incumbent utilities would divest their generation assets[7] and would become "wires" companies. Bundled Standard Offer Service would be provided by APS through purchased power rather than using utility-owned generation. Thus, Rule 1601(45) defines "Utility Distribution Company" as the provider of distribution service and uses that term in various places throughout the rules, while Rule 1601(23) defines a "Load-Serving Entity" to include ESPs providing generation service, UDCs and Affected Utilities. "Affected Utilities" was the term used to describe the various incumbent utilities affected by the Retail Electric Competition Rules during their pre-divestiture period.

Although APS still provides distribution services within its service territory, the Commission appears to have altered the fundamental model regarding the separation of so-called monopoly services from UDCs that was a core component of the original rules. That change will require, at a minimum, several revisions to the Retail Electric Competition Rules that are necessary under current circumstances and also a clear articulation of the intended policy so that stakeholders can take the steps necessary to best give effect to whatever policy is envisioned.

1. Separation of Monopoly and Competitive Services and Self-Build Option

Rule 1615 addresses the separation of monopoly and competitive services. Although the divestiture requirement of that rule was suspended by the Track A decision, the rule today has three components:

- The required separation of all competitive generation assets and Competitive Services from an Affected Utility;
- A prohibition on Affected Utilities from offering Competitive Services, with the exception of billing and load profiling under some narrow circumstances; and
- An exemption for Electric Distribution Cooperatives.

Although some parties in recent Commission proceedings have argued that there was a distinction between "competitive generation assets" and generation assets used to provide Standard Offer Service, which is a Noncompetitive Service, the intent behind Rule 1615 has always been clear. In the Concise Explanatory Statement accompanying Decision No. 61969 (September 29, 1999) and in response to a request by an ESP to delete the word "competitive" before the words "generation assets," the Commission stated that such a change was unnecessary because it was "clear that competitive generation includes all generation except for Must-Run Generating Units."[8] Indeed, to argue that Rule 1615 did not apply to generation used for Standard Offer service is to vitiate the entire Rule, since all of the Affected Utilities' generation was used for such purpose. And even the seeming possibility of an exception being made for must-run generation is less than clear in view of both Rule 1609(I), which speaks of must-run

generation as having been divested, and the fact that both the 1998 APS/TEP/Staff settlement and the 1999 APS and TEP settlements called for the divestiture of even must-run generation.

Although the Commission had previously taken the position that the separation of generation assets was necessary to allow retail competition to develop, the Track A decision signaled a retreat from the separation of such assets required by Rule 1615. At present, the result of the Track A order for APS and TEP has been to re-implement the State's prior policy of fully vertically-integrated electric utilities, albeit without necessarily having exclusive service rights for generation in their service territories and with a portion of their supply for retail Standard Offer customers subject to mandatory and Commission-regulated wholesale competitive procurement.

A clear understanding of the Commission's policy determination regarding divestiture is essential for Affected Utilities such as APS to understand and address their obligations going forward. For example, the Track A decision left in place for APS the obligation to serve all customers who request Standard Offer service and an obligation to retain utility-owned generation to supply generation service to such customers. At the same time, however, the Track A decision is unclear as to whether APS is either obligated to or precluded from constructing new generation to meet the needs of its customers and, if the former, have such generation treated like any other utility asset—reflected in rates at cost-of-service.

This is the type of potentially conflicting policy than almost bankrupted electric utilities in Nevada, and has ultimately caused significant rate increases in that state. In Nevada, the Public Utility Commission believed that the two electric utilities should have anticipated wholesale power price increases and taken action to protect their customers. The utilities argued that because of that state's retail competition rules and mandatory divestiture plans, they could not reasonably procure or self-build generation for load that they could not, by law, serve after mid-2003. The result was a prudence disallowance of hundreds of millions of dollars.

If the Commission intends to leave Arizona utilities with the obligation to serve and orders them to retain utility generation and plan for the generation supply needs of Standard Offer customers, then the Commission should allow the utilities sufficient flexibility to meet those obligations at acceptable levels of risk and cost. Indeed, there are already significant risks confronting utilities, such as potential attrition of customers to direct access service after the utility acquires power supply for such customers, or potential encroachments by municipal entities and special purpose districts, or distributed generation and other technological developments.

One means to afford flexibility is to specifically recognize the right of a utility to self-build generation supply, and have that generation treated as any other regulated asset, if the utility determines that such construction is more appropriate for customers than other supply alternatives. The existing Rule 1615 could then be narrowed to limit its reach only to clearly Competitive Services such as unbundled generation, metering, and meter reading.

2. Competitive and Non-Competitive Services

The original goal and intent of the Retail Electric Competition Rules was to disaggregate the traditional bundle of regulated retail electric services into two fundamentally distinct categories—competitive services and non-competitive services. At no point during the development of the rules was there any intent expressed by the Commission to expand this scope of regulation to encompass previously unregulated services such as demand-side management or energy management services. The Retail Electric Competition Rules set out a description of Noncompetitive Services in Rule 1601(29), but then define Competitive Services in Rule 1601(7) vaguely to include essentially anything that is not a Noncompetitive Service. The Commission should avoid ambiguity in definitional parts of the rules and specifically identify any Competitive Services that an incumbent supplier cannot provide. Likewise, the Commission should specifically identify what are at present Noncompetitive Services that can only be provided by an Affected Utility.

An example of how the current Retail Electric Competition Rules fail to properly address this distinction is Must Run Generating Units service, which is defined to be a Noncompetitive Service in Rule 1601(29). The definition would appear to limit Affected Utilities to providing must-run generation. However, must-run service may be provided by any local generator when in reliability must-run (RMR) status. In fact, the Commission is requiring APS and TEP to include RMR resources in the Track B competitive solicitation. Regardless, the specific treatment and costs associated with RMR are ultimately FERC jurisdictional.

Similarly, transmission is listed as a Noncompetitive Service. Although it is a FERC-tariffed, rate-regulated service, ESPs obtain transmission from Affected Utilities or other transmission owning entities to provide service to their direct access customers. Thus, a literal reading of the rules as currently written could suggest that ESPs are providing Noncompetitive Services to their end-use customers when they purchase transmission to serve such customers, or that entities other than Affected Utilities or UDCs may not provide transmission. Clearly, neither is intended by the Retail Electric Competition Rules.

Ultimately, the goals of the Retail Electric Competition Rules should be to make the determination of what services are either Competitive Services or Noncompetitive Services as simple and straightforward as possible. Thus, APS believes that the list of services in each category should be short with services falling outside the two definitions either subject to different jurisdictional regulation (in the case of FERC services) or available to either ESPs or Affected Utilities. APS would propose the following breakdown if the Commission decides to continue to pursue retail choice:

Competitive Services:

- Generation for Direct Access Customers
- Metering Service for Direct Access Customers 20 kW and over
- Meter Reading Service for Direct Access Customers 20 kW and over

Noncompetitive Services:

- Distribution Service
- Standard Offer Service
- Load Profiling for Direct Access Customers less than 20 kW

Billing and collection should be allowed to be provided by Affected Utilities (UDCs), ESPs or both, either directly or through third-parties (such as credit card companies) under contract to provide such services to the regulated entities. However, neither Affected Utilities or ESPs should be *required* to use joint billing.

3. Must-Run Generation

Ironically, the only type of generation that the Commission had apparently once envisioned remaining with incumbent utilities has been made contestable in the Track B process. Because APS has been required to retain such generation and based on the language in the Track B decision, it does not appear that the historic cost-of-service ratemaking treatment or regulatory status of such assets is in question. Further, must-run generation is largely subject to FERC regulation because it is closely tied to transmission service. Thus, specific protocols associated with must-run service between APS and retail ESPs serving customers in APS' service area will be addressed at and approved by FERC.

The Commission should evaluate and clarify its view on the role of must-run generation in the context of retail competition. Also, the Track B process which envisions must-run generation to be somehow contestable should be clarified. As APS had commented in that proceeding, if there are competitive generation supply alternatives that can reach apparently constrained load, there is by definition no constraint and no "must-run" issue. And, there are generally few competitive alternatives available, thereby making the efficacy of competitive bidding among such limited alternatives questionable. In fact, given the Commission's definition of must-run generation—which is any local generation that must operate due to transmission import limitations—additional local generation, whether utility-owned or not, added inside a constrained area cannot by definition resolve any must-run generation situation.

All of this makes it conceptually difficult to understand the purpose of making must-run generation contestable. Also, the regulatory treatment and consideration of must-run generation has not been the subject of any rulemaking proceeding. A rulemaking proceeding that meets the requirements of the Arizona Administrative Procedures Act could consider the role and regulatory treatment of must-run generation while considering both FERC's and the Commission's authority over such generation. It could also articulate the goals that the Commission intends to pursue regarding this issue, which would provide the regulatory community with a clearer understanding of how must-run generation fits into the Commission's vision for electric competition.

B. Competitive Bidding For Standard Offer Load

In the Track B decision, the Commission articulated a process for the initial competitive solicitation by the two utilities presently subject to mandatory competitive procurement requirements. The solicitation will occur this spring with contracts being entered into by July 1, 2003. However, that process is not reflected in the Retail Electric Competition Rules and has not been through a formal rulemaking proceeding. Although certainly some "lessons learned" will result from the initial competitive solicitation, any review of the Commission's electric competition rules should consider this issue. Some of the more significant procurement-related issues that APS believes should specifically be addressed are discussed below.

1. Need to Preserve Load-Serving Flexibility

As APS discussed throughout the Track B process, any policy that moves incumbent utilities towards mandated wholesale competitive procurement either needs to leave sufficient flexibility to allow these utilities to manage their wholesale procurement subject to traditional prudence review, or make mandated procurements subject to prompt approval by the Commission and provide for full and timely cost recovery. The policy should also confirm to utilities that have been ordered to retain their generation resources that such retained resources will continue to receive regulatory treatment under the same cost-recovery principles as other utility-owned investments.

One way to help preserve appropriate flexibility in procurement is, as discussed above, to specifically recognize that under appropriate circumstances the utility should have the obligation to self-build generation resources and correspondingly the right to have those resources treated like any other utility-owned asset. If such recognition is not provided, there is little incentive for the utility to self-build, and any decision to construct new generation would be the regulatory equivalent of the utility being compelled to undertake a merchant generation project.

At a minimum, the Commission should allow a flexible secondary procurement process as a supplement to any formal Track B competitive procurement. The nature of wholesale markets, and lessons learned from California, requires that APS be allowed to engage in forward contracting and hedging to minimize its commodity risk. It should also be allowed to procure resources outside the more rigid Track B process when circumstances make such procurements attractive for APS customers. Indeed, it was this flexibility in wholesale power procurement, at least in part, that allowed APS to weather the unprecedented recent volatility in the wholesale markets while still providing rate reductions.

2. Wholesale Market Development

The Commission should re-articulate and explain the objectives associated with wholesale procurement by UDCs. The long-recognized obligation of utilities is to provide service to customers at just and reasonable rates. In the Track B proceeding, however, there was discussion that utilities should also be evaluating how their procurement decisions affect, among other things, the development of the competitive wholesale market. That decision stated:

> The utilities' goal should be to obtain for their customers the least-cost mix of reliable power over the long term, while being mindful of the air and water issues [and] effects of their procurement decisions, as well as whether their procurement decisions will further this Commission's goal of encouraging the development of a competitively robust wholesale generation market in Arizona.[9]

Unfortunately, these directives will oftentimes be in conflict.

At least one of the questions presented by this mandate is what are the measurements of a competitive market, and what is APS expected to do? For example, is APS required to pay more for wholesale power if doing so will allow multiple wholesale competitors to contract with APS and thus, perhaps, benefit the wholesale market? Or, if APS is presented an excellent price for "full requirements" from a single wholesale supplier, must APS reject that offer because if it were accepted it would not "further" the development of the wholesale market? What further obligation is APS expected to assume if it and other potential suppliers already pass FERC's Supply Margin Assessment and are part of an RTO? Any rulemaking should thus explain how these sometimes conflicting directives and policies are to be reconciled, as well as provide specific criteria by which utilities can measure compliance if a policy of wholesale market development is adopted.

Additionally, the context of the Commission's role in wholesale market development has changed since the 1999 rules were first adopted. The Track A decision has left APS and TEP owning generation resources that were previously assumed to be divested. Also, FERC is proposing a standard design for wholesale power markets in its SMD initiative, which has potential implications for the structure of any wholesale market in Arizona. In particular, the uncertainty of future policy has resulted in a short-term market that may be quite different from the long-term market, depending on how events unfold over the next few years. Ultimately, these open issues suggest that part of the Commission's evaluation of the Retail Electric Competition Rules and their relationship to wholesale markets should be specifically considered in a rulemaking proceeding.

3. Need for Pre-Approval of Long-Term Contracts

Although the Track B decision declined to include Commission pre-approval of long-term power contracts, that concept is something that should be carefully reconsidered in any rulemaking addressing wholesale competitive power procurement. Incumbent utilities already face many risks associated with long-term wholesale power procurement. These risks include the potential attrition of Standard Offer load under direct access and the risk of credit defaults from counterparty suppliers, both of which increase the per-kWh cost to serve Standard Offer customers. Given these already-known risks, the additional risk of regulatory uncertainty should be avoided where possible.

If a utility is presented with a long-term contract that is attractive to customers—just as was the case with APS and the Pacificorp diversity exchange or the Salt River Project Territorial & Contingent Agreement—it should be allowed to seek Commission pre-approval of such contracts. Moreover, all contracts from a mandated procurement process should be pre-approved,

as occurs in other states having state-sponsored power procurement.[10] This would largely eliminate the need for a "regulatory out" provision in those contracts. It would likewise help ensure that the prudence of such a contract is evaluated when it is both legally appropriate and most practical to do so, which is at the time the original decision is to be made.

4. Need for Timely and Full Cost-Recovery

Also related to the risks discussed above, the timely and full recovery of costs associated with compliance with the Commission's Retail Electric Competition Rules should be confirmed. The Track B order envisions mandatory procurement of some of APS' wholesale power supply requirements. Under such circumstances, a power supply adjustment clause is appropriate to ensure that certain costs under this mandated process are fully and timely recovered by the utility. Similarly, the Retail Electric Competition Rules have required significant compliance costs to be incurred by the utilities, which in APS' case are allowed to be deferred and recovered from customers after mid-2004. This type of certainty of cost recovery for all prudently-incurred costs should be continued and recognized in the Retail Electric Competition Rules.

C. Environmental Issues

The current Retail Electric Competition Rules do not specifically address environmental issues, apart from the Environmental Portfolio Standard, which is discussed in a separate section of these Comments. However, one area that generated extensive discussion during the Track B proceeding was the role of environmental issues in wholesale procurement. The Track B decision rejected a call from the LAW Fund for specific requirements relating to environmental risk management and Demand Side Management in connection with the competitive solicitation. However, the Track B decision does require APS to "[consider] the air quality and water issues [and] effects of [its] procurement decisions."[11] At the same time, APS is directed to use "least cost planning principles" and obtain the "least cost mix of reliable power" over the long term.[12] Again, these directives would at least appear to be in conflict.

The evaluation of environmental issues may be possible when unit-specific contracts are considered. However, this is more of a problem when the contracts in questions are provided from a supplier's system-portfolio, which may consist of hydro units, coal units, gas units and even some nuclear capacity. Some wholesale generators, such as Sempra, made it clear in the Track B proceeding that they did not wish to specify a particular power plant with their bids. Similarly, energy traders and marketers may not even know the original source of power that they wish to sell to APS. And, even those power plants that provide unit-specific power may be required to procure power from the general wholesale market if their plant is offline or economy displacements of that specific generation resource could occur. Under these circumstances, the ultimate environmental effect associated with the procurement could not be known.

The Track B decision directs Staff to host workshops on a DSM policy and environmental risk management policy, and file a report within 12 months of the decision. If the Commission wishes to specifically address environmental issues regarding the competitive solicitation process, the rulemaking associated with the Retail Electric Competition Rules should include any such requirement. Given that the initial procurement will be completed this summer,

it should be possible to include (or exclude) the experiences relating to this matter that resulted from the Track B procurement and potentially the workshop process discussed in the Track B order. Regardless, a more specific articulation of how the utilities are to address air quality and water issues, and whether any other environmental issues should be considered, would help add certainty to the procurement process in the future and allow all stakeholders to better implement the Commission's policy objectives.

D. In-State Reciprocity (Rule 1610)

Under the Arizona Constitution, the Commission does not have general regulatory jurisdiction over municipal corporations, nor does it regulate merchant generators apart from the context of facilities siting. In the past, the Commission has closely coordinated with the Legislature to ensure that there was as much consistency as possible in the state's Retail Electric Competition Rules and the retail electric competition legislation that applied to non-jurisdictional entities. The extent of and potential need for further legislative coordination, particularly as the Legislature is also studying retail electric competition, should be considered in this review of the Retail Electric Competition Rules.

1. CC&N Integrity

One issue that was quite clear in both the Retail Electric Competition Rules and in House Bill 2663 (HB 2663), which legislatively implemented retail competition in the state and outlined requirements for Public Power Entities, was that utility distribution service areas would remain noncompetitive. Competition would come in the form of the generation component of customers' electric service, not the "wires" component. This is essentially the same standard that is present in all jurisdictions that have adopted retail competition, and it appropriately prevents the unnecessary and harmful duplication of distribution facilities.

Rule 1610 was drafted to specifically address the situation of non-Public Power Entities, such as special purpose districts, participating in retail direct access. That rule both requires an intergovernmental agreement for such an entity to offer direct access service and does not impact the integrity of the distribution service areas of Affected Utilities. However, as the Arizona Supreme Court's February 2003 decision in *Hohokam Irrigation District v. Arizona Public Service Company*[13] illustrates, the current state of the law in Arizona is not protecting distribution service areas nor meeting the intent of Rule 1610.

The *Hohokam* case arose when an irrigation district began providing bundled electric service to selected commercial customers within APS' service territory, including some that were outside the boundaries of the district. In a declaratory judgment action, both APS and the district sought an adjudication of their respective rights. The district argued that its offering of service was consistent with the state's policy for retail electric competition, even though the state policy had never supported bundled "wires" competition nor had the district provided its own customers with retail choice. Moreover, most districts had been specifically exempted from any of the requirements that apply to statutorily-defined "Public Power Entities"—which today include only Salt River Project and some municipal utility systems—and are thus not covered by any legislation addressing retail electric competition.

The Arizona Supreme Court in *Hohokam* ultimately held that an irrigation district can provide bundled retail electric service inside the certificated service area of utilities like APS, as long as such service is "incidental" to their statutory purpose of providing water for irrigation. The court did not explain what did or did not constitute "incidental" service.

The Court's decision ultimately leaves customers and utilities at risk, as there was no requirement imposed in *Hohokam* that these districts serve all customers. Thus, there is a real possibility of these districts "cherry picking" attractive customers from incumbent suppliers while foregoing those customers that are more expensive to serve. This leaves increased costs on the utility's system that must be absorbed by remaining customers. Also, there is no specifically defined requirement to address customers that leave APS for a district service offering, but that may in the future demand provider of last resort service if the district cannot or chooses not to continue to serve them. That makes it more difficult for Affected Utilities to plan on energy and capacity needs, and any return to APS service would most likely be made when power prices are at a peak. Further, as agricultural areas give way to urban development, the nature of what constitutes "incidental" service for special districts begs closer analysis. Is a district that has a single irrigation pumping customer and 5,000 bundled residential and non-agricultural business customers still engaged in just "incidental" electric service?

If the Commission desires to protect the integrity of the distribution service areas of regulated electric utilities, and wishes to level and make consistent the playing field for retail competition in Arizona, it will be necessary to work with the Legislature on this issue.

2. Municipalization

Although less of an immediate threat, municipalization issues should be considered as retail electric competition policy is explored. As a result of California's experience with retail competition, there have recently been increasing efforts by municipalities in that state to condemn electric utility facilities and take over such service themselves.[14] In Arizona, A.R.S. § 9-516 requires that a municipality that intends to "compete" with an incumbent utility must condemn the needed facilities before it begins such service. This statute protects, to some extent, existing customers by requiring that any such municipality condemn all the facilities in that area, and provide service to all customers in that area. It does not, however, change the fact that municipalization removes such areas from the Commission's jurisdiction.

Most disturbing, however, is one holding of the *Hohokam* decision that provides that districts that wish to compete inside a certificated utility's service territory may not be required to condemn any of the utility's facilities. Working with the Legislature to rationalize the statutory policy that governs municipal entities, whether they are cities and towns or special purpose districts, should be considered by the Commission in connection with its general evaluation of the Retail Electric Competition Rules.

3. Jurisdiction Over Merchant Generators

The original Retail Electric Competition Rules did not envision Commission oversight of merchant generators—it does not even discuss merchant generators. Under the rules, retail ESPs are public service corporations and are regulated by the Commission, although their prices are set by the competitive market. In contrast, merchant generators are not public service corporations and are not regulated by the Commission apart from facilities siting. Despite this, the Commission has articulated some jurisdiction over merchant generators either through Certificates of Environmental Compatibility issued when siting their plants or indirectly through the Track B proceeding. For example, the Commission has directed merchant generators participating in the Track B process to provide certain written assurances of the bidder's Chief Financial Officer.[15] In its review, the Commission should determine whether specific requirements relating to participating merchant generators should be included in the Retail Electric Competition Rules or coordinated with the Legislature.

E. Transmission Issues

Several transmission issues that relate in some respect to electric competition, whether wholesale or retail, are being considered in proceedings separate from the Retail Electric Competition Rules. For example, the issue of transmission constraints and the costs and benefits associated with relieving such constraints are being considered as part of the Commission's Biennial Transmission Assessment process, although they were also discussed in the Track B order. In that Biennial Assessment, the Commission also encouraged merchant generators to share in responsibility for the transmission system, although there has as yet been little specific activity beyond interconnection requests. The Commission may want to consider clarifying some portions of Rule 1609 in this rulemaking, perhaps by addressing the specific role of merchant generators regarding transmission infrastructure, in addition to the ISA/RTO issues discussed below.

1. Arizona Independent Scheduling Administrator

The AISA was created under Rule 1609(D) to address issues relating to transmission access for retail suppliers. The resulting AISA protocols were successful in that regard. For example, the AISA ensured that a retail supplier with a 10 MW load in APS' central Phoenix service area could schedule all of that load from a single market hub like Palo Verde, rather than obtaining pro rata schedules from APS' other transmission delivery points at Four Corners, Mead and Navajo in the same manner as do Standard Offer customers. The result of the stakeholders' work with the AISA is now part of APS' Open Access Transmission Tariff (OATT) and would be available to any ESP supplier seeking to serve in APS' territory.

Other issues relating to the continued role of AISA are, under the Track B decision, subject to a Staff Report due by May 30, 2003. APS thus anticipates that the AISA, and the Retail Electric Competition Rules relating to the AISA, will be subject to the rulemaking process and the ECAG.

2. RTO Development

The Retail Electric Competition Rules, through Rule 1609(F), also direct each Affected Utility to develop an RTO. In compliance with the rules, APS and other Arizona stakeholders have made significant investments into developing first Desert Star, and now the WestConnect RTO. Since the initial unveiling of FERC's Order 2000 and its subsequent SMD order, some states have questioned FERC's policy on wholesale transmission and market design. Some states have gone further and precluded jurisdictional utilities from participating in RTOs absent further studies and state regulatory review. Commissioners in Virginia actually recommended that the legislature "re-bundle" all retail electric service to minimize the potential intrusion of FERC jurisdiction. This trend has pitted some state regulators against federal regulators, leaving utilities stuck in the cross-fire. Given this national experience, the Commission should clarify its intent regarding RTO formation and decide on any state-related RTO policy issues now, rather than when it is too late for the utilities to practically address Commission concerns.

3. Standard Market Design

FERC's effort to standardize national wholesale power markets through its SMD initiative presents yet another layer of risk and complexity to the task of developing electric competition in Arizona. The Commission has suggested that SMD is a "noble dream" premised on theory and presuming optimal conditions.[16] The Commission has articulated why Arizona is different than the East Coast and the tight power pools that seem to form the basis for the SMD proposal. Nonetheless, APS is subject to FERC jurisdiction and much of what FERC is attempting to achieve through SMD cannot be ultimately controlled by states. As a result, there exists a real possibility that state-imposed requirements relating to wholesale electric markets and FERC-imposed requirements on the same markets will conflict. Thus, it will be necessary as Arizona develops rules relating to wholesale markets to reconcile such rules with those being developed by FERC.

F. Code of Conduct Requirements

The current Retail Electric Competition Rules have a specific code of conduct section that addresses affiliate conduct issues between a UDC and any ESP affiliate. This code of conduct did not address issues relating to relations between a UDC and a generation affiliate. There are also currently other regulatory requirements that apply to incumbent utilities. APS has, for example, a FERC Code of Conduct, FERC Standards of Conduct, its state Code of Conduct, Standards of Conduct for the Track B competitive solicitation, and has filed a revised state Code of Conduct as required by the Track A decision. In some respects, these codes and standards of conduct are or may be overlapping and could even be contradictory. Further, the FERC Standards of Conduct are undergoing review and may be substantively modified in the near future.

Because APS personnel and the employees of APS' affiliates need to be trained on these requirements and need to be able to understand them, it is important that they be clear and rational. The Track A order directed APS to submit a proposed Code of Conduct to address its wholesale affiliates, which it has done, and a hearing is expected after the Track B solicitation

concludes. However, the Commission may want to include refinement of Rule 1616 in this review process, address the potential for overlapping or potentially contradictory FERC and Commission requirements, and consider how a separate state code of conduct should relate to wholesale procurement by Affected Utilities on the one hand, and retail competition by their affiliates on the other.

APS believes that any refinement to the Code of Conduct should be done in a balanced and fair manner, and should not:

- Impose a barrier to efficient operations;
- Result in excessive cost;
- Impede corporate governance, support and oversight; or
- Excessively regulate activities that pose no risk to customers.

The development of the code of conduct requirements in the Retail Electric Competition Rules should also specifically consider and prevent conflicts with different requirements that are being considered or have been adopted by other jurisdictions, such as FERC and the Sarbanes-Oxley Act.

V. Environmental Portfolio Standard

The Environmental Portfolio Standard (EPS) was adopted separately from the Retail Electric Competition Rules in Decision No. 63364 (February 8, 2001) and Decision No. 63486 (March 29, 2001). The EPS established a goal that, by 2007, 1.1 percent of the total retail energy from load serving providers would be supplied by new solar or other renewable resources. The EPS requires that, after considering various extra-credit multipliers, the portfolio consist of 60 percent solar electric resources and no more than 40 percent solar hot water heater or other renewable resources.

Because renewable energy and particularly solar energy is more expensive than non-renewable energy, the EPS created a surcharge mechanism to collect funds from customers to pay for the portfolio requirement. In APS' case, some additional funds are added to that surcharge from system benefits charges that were already in APS' rates at the time the EPS was approved. But the Commission was clear when it wrote in Decision No. 63364 that "[it] is the intent of this Rule that the surcharge will cover the cost of the mandate."[17]

There is still some time before 2007, but the surcharge will not cover the cost of the mandate as currently drafted. Although APS had questioned whether the surcharge was sufficient at the time the rule was adopted, the costs for solar generating technology have not come down as much as expected by participants in the initial development of the EPS.

In its consideration of the Retail Electric Competition Rules, the Commission may want to consider one or a combination of several alternative approaches for the EPS on a generic basis:

- Alter the mix of solar and other renewable resources to increase the percentage of other renewable resources, which are less expensive per kW and per kWh, and correspondingly decrease the amount of solar electric kWhs required;
- Increasing the surcharge collected from customers to increase procurements of solar and other renewable capacity used to meet the standard;
- Delay the compliance targets for the 1.1 percent portfolio requirement to allow the costs of solar technology to decrease to more cost-effective levels and allow installations of solar capacity to increase more gradually; or
- Decrease the standard from 1.1 percent to a lower number that can be achieved at existing funding levels.

Whatever course is considered, the current standard cannot be met on schedule with existing funding levels. Thus, either generic modifications to the rule or company-specific variances are necessary. Also, the Cost Evaluation Working Group will be issuing a report this summer on the costs of the EPS which could be considered in more detail in a rulemaking. Additionally, the final standard for the EPS should be subject to an appropriate cost-benefit analysis that demonstrates that the standard is both practical and beneficial.

VI. Power Plant and Transmission Line Siting Act

Another critical lesson from California is that energy-related facilities are needed to provide reliable, cost-effective service to customers, even though the construction of many such facilities are often opposed by specific interest groups or those that live near proposed facility sites. At the federal level, some lawmakers are proposing legislation to provide for federal preemption of state siting decisions that hinder the construction of energy facilities. As the Commission has noted to the Arizona Congressional Delegation, Arizona's history of siting generation and transmission facilities has not been one of denials of facilities needed for reliability and cost-effective service.

Although there is a strong record of approving necessary and reasonable energy projects, the Commission may want to expressly consider improvements to the Siting Act[18] that further ensure that it not become a vehicle to delay or hinder the construction of such projects. Indeed, the legislative history of the Siting Act shows that it was intended to avoid delays in new construction of energy-related facilities and to avoid increased costs that are ultimately passed on to customers, while preserving the environment and providing a single forum for interested parties to participate.[19]

To ensure that the Siting Act continues to live up to its legislative purpose, the Commission should address:

- How federal lands and federal reviews under the National Environmental Policy Act (NEPA) are considered by the Siting Committee and the Commission;
- The appropriateness of conditions in a Certificate of Environmental Compatibility relating to non-environmental issues such as system planning, cost recovery, or the technical implementation of other projects;
- Conditions involving matters under the primary jurisdiction of other agencies, and how to address the provisions regarding such primary jurisdiction in A.R.S. § 40-360.06(C);
- The appropriateness of conditions that interpose obligations outside of the control of the utility, such as conditions requiring some action by third parties that are not subject to the Certificate of Environmental Compatibility;
- Standardizing some recurring conditions relating to such subjects as archeological mitigation, wildlife and native plant protection, and construction mitigation and restoration plans; and
- Articulating what constitutes a substantial change to a Certificate of Environmental Compatibility that requires Commission approval and how such determinations can be made.

While these issues may not at first blush appear directly related to the Retail Electric Competition Rules, they will have an effect on electric competition and the ability of stakeholders to respond to different market signals. Thus, whether done through the separate

Notice of Inquiry proceeding that was initiated by Staff on April 8, 2003 or a subsequent rulemaking, or through a rulemaking relating to the Retail Electric Competition Rules, the Commission should consider how facilities siting supports its overall policies, and what can be done to improve and streamline that process.

VII. Conclusion and Recommendations

APS fully supports the Commission's and the ECAG's review of the Retail Electric Competition Rules. But APS believes that process should focus on overall policy issues relating to retail electric competition in Arizona and not just on specific changes that should be made to individual rules. The process should complete the circle of the broad policy inquiry that the Commissioners initiated in 2002. That evaluation should begin by looking at the original goals of retail electric competition and considering whether there should be any changes to those goals, and only then to potential process changes to reach those goals.

With respect to the original goals articulated in 1996 and described above, the Commission should consider the following core issues:

- Any benefits of retail competition may be "lumpy" and likely will not be experienced by all customers—either at all or in equal measure in the same time horizon—and may come at the expense of other policy goals of the Commission.
- Competition cannot be made risk-free by regulation.
- The Commission should strive for simplicity and consistency in its regulation and avoid unnecessary complication where possible.
- Any new regulatory mandates should be subject to a comprehensive cost-benefit analysis to ensure that they actually will benefit customers without unintended adverse consequences or adverse impacts on regulated utilities.
- Regulatory mandates to Affected Utilities and Electric Service Providers (ESPs) should be clear, reasonably achievable, and developed in lawful proceedings with both sides of the regulatory compact unambiguously articulated and observed.
- Affected Utilities should have a reasonable opportunity to fully and timely recover the costs of doing business, and particularly costs incurred in response to specific Commission directives.
- The Commission's ability to effectively "regulate" both wholesale and retail competition and the environment is circumscribed by federal preemption of certain wholesale and interstate activities, federal or state regulation of environmental matters by other agencies with primary jurisdiction, and by the Commission's limited jurisdiction over public power entities and merchant generators.

Many specific changes to the Retail Electric Competition Rules will require the Commission to appropriately balance the underlying policies relating to electric competition in Arizona. Depending on the answers, the resulting changes could be major or they could be slight. Regardless of the ultimate level of inquiry, however, APS believes that the ECAG process and consideration of the Retail Electric Competition Rules will help provide clarity and understanding to stakeholders in this process and limit adverse consequences to Arizona consumers and utilities.

Endnotes

[1] February 22, 1996 letter from Gary Yaquinto to interested parties.

[2] General Accounting Office, Lessons Learned from Electricity Restructuring GAO-03-271 (December 2002).

[3] *Id.* at Highlights.

[4] Sempra Energy Solutions, New West Energy, Sierra Southwest Cooperative Services, APS Energy Services, NEV Southwest, and PDM Energy.

[5] Southwest Energy Solutions, IMServ North America, CSC Energy Services, and KWH Metering.

[6] Arizona Corporation Commission letter to Pat Wood dated February 28, 2003.

[7] Specifically, the rules would allow UDCs to retain solar and other renewable generation under the Environmental Portfolio Standard and some have asserted that Must Run Generation could be retained by a UDC, although such an interpretation is contradicted by Rule 1609 and the various APS and TEP settlement agreements.

[8] Decision No. 61969 (September 20, 1999) at 60.

[9] Decision No. 65743 (March 14, 2003) at 75.

[10] *See, e.g.,* R.C.S.A. § 16-243a-6 (Connecticut commission reviews evaluation of generation RFPs to ensure consistency and approves results); Feb. 6, 2003 Decision, Docket No. EX01110754 (New Jersey B.P.U.) (New Jersey commission certifying statewide generation auction and approving auction results within two days); Nov. 14, 2002 Settlement Agreement, Md. P.S.C. Docket No. 8908 (Maryland commission will approve bid plans and approve results; although a commission decision is still pending, the commission Staff supports the settlement); Decision 02-12-074 (Cal. P.U.C., December 19, 2002) (approving California utilities' short-term procurement plans).

[11] Decision No. 65743 (March 14, 2003) at 81.

[12] *Id.* at 75.

[13] 64 P.3d 836 (2003).

[14] Corona, California is involved in a very public effort to municipalize Southern California Edison facilities within the city.

[15] *See* Decision No. 65743 (March 14, 2003) at 71.

[16] Comments of the Arizona Corporation Commission in FERC Docket No. RM01-12-000 (November 15, 2002).

[17] Decision No. 63364 (February 8, 2001) at 4.

[18] A.R.S. § 40-360 *et seq.*

[19] *See* Laws 1971, Ch. 67, § 1.

Appendix A:
Status of Retail Electric Competition Throughout the United States

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April 21, 2003

Alabama. Regulators in Alabama studied the potential for retail competition and electric restructuring for four years. In its final report, the Alabama Public Service Commission concluded that electric restructuring was not in the best interests of the state "at this time." The October 2000 report stated that "[t]here is no distinct advantage to being at the forefront of this grand experiment."[1] The report also stated:

> While Staff believes in the free market and the theoretical concepts that support that movement as it applies to the electric utility industry, the Staff does not believe that it has been demonstrated that all consumers in Alabama would continue to receive adequate, safe, reliable and efficient energy services at fair and reasonable prices under a restructured retail market, at this time.[2]

Alaska. Alaska's legislators issued a joint committee report in 1999 requesting an in-depth legislative investigation into restructuring in preparation for the implementation of a pilot restructuring or retail access program.[3] Only two years later, however, the newly-formed Regulatory Commission of Alaska issued an order ending the inquiry into retail electric utility restructuring in Alaska because "projections of any potential benefits are too speculative at this time."[4]

Arkansas. The Arkansas legislature had adopted comprehensive restructuring legislation in 1999, which was further amended in 2001. It required the state's Public Utilities Commission to start full retail competition between October 2003 and October 2005. This February, Arkansas joined California in repealing its restructuring legislation and ending retail access in the state.[5]

California. California initiated the national trend towards retail electric competition in the mid-1990s when it published its "Blue Book."[6] The Blue Book established several guiding principles for retail electric competition—no cost shifting between customer groups, preservation of the utilities' reasonable opportunity to earn a return, continuation of vital public purpose programs, and the continuation of the safe, reliable, reasonably-priced, and environmentally responsible electric service to Californians. The plan for retail electric competition adopted in California in 1996 was ultimately contained in California Assembly Bill 1890 (AB 1890), which legislators claimed fixed the "fatal flaws" in the Blue Book plan, maintained "the integrity and reliability" of the state's electric system while allowing small energy customers to benefit from competition.[7]

Just five years later, in 2001, the California legislature abruptly suspended direct access in California in Assembly Bill 1X (AB 1X). According to the legislature, that bill was necessary:

> to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of [California].[8]

A controversial California Public Utilities Commission decision implemented this suspension of direct access for all new customers effective as of September 20, 2001.[9] Now, only direct access customers who were under contract prior to September 20, 2001 can receive such service. However, even this limited vestige of retail competition was criticized as inappropriate—the dissent noted that it placed California's already struggling utilities at greater risk by allowing existing direct access customers to continue receiving service from Electric Service Providers who have no obligation to serve and could "dump" their customers onto the utilities if the market "spirals out of control again."[10]

Earlier this month, California lawmakers finally unveiled a plan to repeal the state's 1996 energy deregulation laws, ending retail competition.[11] According to one state senator: "we're not mending [the restructuring laws], we're ending [them].[12] The legislation repeals key points of the deregulation act, including a provision that allowed customers to choose energy providers other than their local utility.

Colorado. Lawmakers in Colorado studied retail electric competition, with the Colorado Electricity Advisory Panel authoring a comprehensive final report in late 1999. A majority of members on the panel concluded that restructuring was not in the best interest of consumers in Colorado.[13] The report cited several reasons for opposing restructuring, which included Colorado's current low rates, a consultant study modeling the effects of restructuring which found that rates were likely to rise, and evidence that rate impacts would be disproportionately shared among classes of consumers, with low-income, fixed-income, rural, residential, and small consumers seeing the greatest rate increases.

Connecticut. Connecticut's electric restructuring bill (HB 5005) was signed into law in 1998. Under the law, all customers may choose their electric supplier in 2000, with standard offer service made available until December 31, 2003. But the Connecticut Department of Public Utility Control has reported that retail competition has not materialized on schedule.[14] By 2002, 12 suppliers and 12 aggregators had been licensed in Connecticut, but only two suppliers were actively seeking customers. Through October 2001, fewer than 3000 customers have switched, representing approximately 0.2% of the eligible customers in Connecticut.

Delaware. The Delaware legislature passed "The Electric Utility Restructuring Act of 1999" (HB 10) on March 31, 1999 and retail access was phased in beginning October of the same year. Retail electricity choice was extended to all customers in August 2000.

District of Columbia. In January 2000, the D.C. City Council passed legislation (13-284) allowing retail competition in the district. In September 2000 the Public Service Commission ("PSC") issued an order implementing retail choice,[15] and in December of the same year it issued another order requiring utilities to unbundled their services.[16] In January 2001, the PSC began allowing direct access for retail customers.

Florida. Florida is not actively pursuing retail electric competition. In July 2000, Governor Jeb Bush set up an Energy 2020 Commission ("Commission") in order to study Florida's energy requirements over the next twenty years. So far the Commission has only made substantive recommendations to the legislature regarding measures that would facilitate wholesale competition in the state. In its Final Report to the Florida legislature, the Commission cautioned against a transition to retail competition and noted:

> Retail competition presents many difficult and challenging issues over and above those that must be resolved to bring about wholesale competition. Adding those issues to the policy agenda compounds the opportunities for mistakes that could have significant adverse consequences on Florida's utility customers.[17]

Georgia. Georgia has not seriously entertained plans to restructure the electricity market in the state. The Georgia Public Service Commission ("PSC") studied the retail competition option in 1998 but recommended against any restructuring for the foreseeable future.[18] In the study, the PSC noted that "clear evidence of benefits to the citizens of the state should be shown prior to any electric industry restructuring in Georgia."[19]

Hawaii. There are currently no electric restructuring plans by state legislators or regulators in Hawaii. The Hawaii Public Utilities Commission began an investigation into retail electric competition as early as 1996, but has not actively pursued the issue.

Idaho. Electricity costs in Idaho are well below the national average and it is unlikely that the state will undertake any major restructuring initiatives. Although the Idaho Public Utilities Commission began a proceeding in 1997 to address the possibility of restructuring, a legislative study group advised against any moves towards retail competition in the state at this time.[20]

Illinois. In December 1997, the Illinois legislature enacted the Electric Service Customer Choice and Rate Relief Act of 1997 (HB 362). The bill adopted retail direct access for some commercial and industrial customers by October 1999, and for all customers, including residential, to choose their generation supplier by May 1, 2002. To date, however, few customers outside the Commonwealth Edison service territory have opted for direct access.

In January 2003, the Illinois Commerce Commission ("ICC") issued its triennial review of retail competition in the state.[21] The report concluded that:

> It is now evident that retail competition may be a long time developing in most areas of the State. In some cases this is merely because bundled rates in some service areas are already very low compared to the rates that alternative suppliers can offer. In these circumstances, the lack of entry by potential competitors in some markets are not so much a sign of barrier to entry, as a sign that alternative suppliers have nothing to offer retail customers taking service from their utility.[22]

The ICC recommended in its report that the state continue to remove market barriers and to encourage federal officials to monitor wholesale markets and move to improve market structures. The ICC also recommended careful monitoring of the progress towards competitive retail markets as rate freezes established for incumbent utilities begin to expire in 2007.

Indiana. Several restructuring proposals have been introduced in the Indiana legislature, but none have received serious consideration. There is little likelihood that any restructuring legislation will be enacted in the foreseeable future.

Iowa. Iowa legislators and regulators launched inquiries into electricity restructuring in 1996 and introduced several pieces of legislation in the following years. However, none was ultimately adopted. In April 2001, the Iowa Utilities Board officially closed Docket No. NOI-95-1, "Inquiry Into Emerging Competition in the Electric Industry."[23]

Kansas. The Kansas Corporation Commission was prohibited from authorizing retail competition prior to July 1999, and froze retail rates for 3 years. The Retail Wheeling Task Force issued a final report and a draft restructuring bill that called for retail access after July 2001.[24] However, neither the Task Force's bill nor several other pieces of similar legislation have been seriously considered by the Kansas legislature.

Kentucky. Kentucky has rejected any move towards electric retail competition. In April 1998, House Joint Resolution 95 (HJR 95) was enacted by the legislature and signed by the governor. The legislation created the Kentucky Task Force on Electric Restructuring ("Task Force"). On August 10, 2000, the Task Force issued a final report to the governor and the Legislative Research Commission concluding that "there is no compelling reason at this time for Kentucky to move quickly to restructure."[25]

Louisiana. As early as 1999, the Louisiana Public Service Commission ("PSC") Staff advised against the introduction of retail competition for residential and medium-sized customers while exploring the possibilities of access for large industrial customers. However, in late 2001, the PSC issued an order against the implementation of any restructuring in the state.[26]

Maine. Maine's restructuring legislation (LD1804) passed in May 1997 and its retail market was restructured in March 2000. Although a substantial percentage of medium to large commercial and industrial customers have left standard offer service for competitive retail supply,[27] most residential and small business customers are still with incumbent suppliers. In fact, over 90 percent of Maine's 500,000 households still use standard offer service, which is competitively bid.[28] Many of those who are not using standard offer service have left for a premium environmentally-friendly competitive service. As a result of slow gains among residential customers, the Maine Public Utility Commission has recommended that standard offer service remain available after its original 2005 expiration.

Maryland. Maryland enacted retail electric competition legislation in 1999, and legislatively mandated rate reductions for incumbent utilities and a transition period that presently ends in July 2003. Recently, however, state legislators are seriously questioning whether retail competition should move forward at all.[29] Although regulators were working out a

"safety net" plan for customers after the rate caps are lifted, they warned legislators that if there were concerns or reservations about deregulation the time to retreat was running out.[30]

Massachusetts. Restructuring legislation was adopted in Massachusetts in 1997 (HB 5005). The legislation required incumbent utilities to reduce retail rates by 15 percent over a transition period. Not long after the law was passed, incumbents requested rate relief when wholesale power supply costs exceeded the costs they could recover from default service customers. Thus, almost all of the savings claimed by Massachusetts from competition generally was as a result of the legislatively mandated rate reductions, as opposed to competitive forces.

Customer acceptance of direct access in Massachusetts has been thin. As of January 2003, less than 3 percent of residential customers had switched from incumbent generation (whether standard offer service or default service) to competitive generation.[31] Also, default suppliers are proposing rate increases. The largest distributor in the state, Massachusetts Electric Company, has proposed raising its rates to default customers from 4.7 ¢/kWh to 7.385 ¢/kWh.[32] This trend led Dr. Mark Cooper of the Consumer Federation of America to note of Massachusetts that "Consumers are not being offered wonderful prices in a competitive marketplace."[33]

Michigan. Michigan's "Customer Choice and Electricity Reliability Act" (Public Act 141 of 2000 and companion Public Act 142) was signed into law on June 3, 2000. In June 2000, the Michigan Public Service Commission issued a series of orders aimed at implementing the state's restructuring legislation.[34] Among other things, the legislation required a 5 percent reduction in rates for the state's two largest investor-owned utilities. Michigan will allow customers of co-ops retail choice in the near future.

Minnesota. There are currently no plans to introduce retail competition in Minnesota. The Minnesota Legislative Electric Energy Task Force addressed the issue of restructuring several times since an inquiry into the issue was launched in 1997. In its last update, the Task Force noted that there was as yet no consensus on moving forward with retail competition.[35]

Mississippi. In May 2000, the Mississippi Public Service Commission suspended an on-going study into restructuring, concluding that retail competition was not in the public interest at this time.[36]

Missouri. Despite several legislative and regulatory inquiries into introducing electric retail competition, Missouri has so far opted against pursuing restructuring seriously.

Montana. In 1997, the Montana legislature adopted an electric deregulation bill that was supposed to benefit the public with lower rates and more consumer choices.[37] Under the law, all consumers were to have direct access by July 2002. In 2001, the Montana legislature passed a new bill to delay the transition period to competition to 2007 and provided for significant state involvement in the electric utility industry. On the final day of the legislative session the bill was amended to reflect a power supply settlement proposed by Montana Power Company and PPL Montana, which had acquired Montana Power's generation assets. The impression among some was that the legislation reflected a "back room" deal. The bill was referred back to the voters,

who ultimately rejected it, although the delayed implementation of competition survived in other legislation.

Despite the retreat from the transition to competition, customers in Montana will be paying higher rates. Last year, the successor to Montana Power entered into power supply portfolios for default service that reflected increases in energy supply costs for residential customers of over 40% from prior rates, and overall bill increases for such customers of roughly 10%.[38] A *New York Times* article reported in 2002: "For residential customers, whom the deregulation law shielded from the first four years of price jumps, bills started to go up this summer, and will rise again next summer."[39]

In a December 2002 Legislative Study, a committee formed to evaluate electric restructuring in Montana wrote: "Restructuring of the electric utility industry is not for the impatient, the weak-kneed, or the fainthearted."[40] It noted that in Montana, like other states, the transition has "often been turbulent and unpredictable." In a section entitled "The Strange and Terrible Saga," the report concludes that retail competition in Montana brought more turmoil than benefits.[41]

Nebraska. Nebraska conducted several studies into retail competition but has not seriously considered restructuring.

Nevada. Nevada utilities have borne the brunt of the state's largely-failed efforts at retail competition. The state had first adopted retail choice legislation in 1997, and later amended that law in 1999 to delay the start of competition to 2000 and give the state's governor the ability to authorize a further delay. The governor "indefinitely" delayed the opening of retail competition in March 2000. In 2001, legislators repealed most of the state's restructuring law, returning Nevada utilities to the role of vertically-integrated suppliers. Now, only certain large customers can opt for competitive supply.[42] Such customers must receive permission from the Public Utilities Commission of Nevada ("PUC") to leave and are potentially subject to both substantial "exit fees" and to limitations on their ability to return to bundled service.

For Nevada utilities, the assault on and subsequent retreat from competition proved especially troublesome. The PUC recently disallowed requests by both Nevada Power Company and Sierra Pacific Power for recovery of hundreds of millions of dollars of wholesale purchased power costs incurred during the regional power crisis in 2001. The PUC accused the utilities of imprudence by not anticipating the need to procure power to cover peak needs during the periods in question. The utilities, however, had been left in limbo because the move to deregulation in the state made their future obligations to supply power unclear, particularly because there was originally no analog to Standard Offer Service in Nevada. As a result, utility managers could not reasonably plan for the long term.

New Hampshire. The New Hampshire legislature enacted HB 1392 in May 1996 requiring the New Hampshire Public Utility Commission ("PUC") to implement retail choice for all customers of electric utilities under its jurisdiction in 1998. However, Public Service of New Hampshire (the state's largest public utility) filed a complaint in federal district court objecting to the legislation's stranded cost recovery plan. In September 2000, the PUC and Public Service

of New Hampshire entered into a settlement agreement allowing, among other things, the utility to recover standard costs. The settlement was signed into law in June 2000, and called for the utility's residential customers to receive a 5 percent rate reduction on October 1, 2000. The settlement also required a capping of residential rates for close to three years and businesses rates for nearly 2 years. Finally, the settlement requires Public Service of New Hampshire to divest its generation assets by July 2001.

More recently, however, the New Hampshire Senate approved a bill that blocks Public Service of New Hampshire from divesting its fossil and hydro capacity until at least April 30, 2006.[43] At that time divestiture will only take place if it is in the economic interest of the utility's retail customers. The New Hampshire House is expected to take up the issue in the coming months.

New Jersey. New Jersey's restructuring law was passed in 1999.[44] The law provided retail choice to all consumers by August 1999 and reduced current rates by 5 percent (and then 10 percent) over the next four years. It also allowed recovery of utilities' stranded costs through a wires charge paid by consumers.

New Mexico. On April 8 Governor Richardson signed a bill into law to repeal the state's 1999 restructuring law.[45] The repeal law officially ends New Mexico's experiment with restructuring its electric utility industry and scraps plans to begin retail competition in 2007. While Senate Bill 718 repeals the Electric Utility Industry Restructuring Act of 1999, it retains the right conferred on electric utilities to recover their restructuring implementation costs, called "transition costs."

New York. The New York Public Service Commission ("PSC") issued its opinion and order on restructuring in May 1996.[46] The PSC adopted the goal of having a competitive wholesale market by 1997, and a competitive retail market by early 1998. The order also required utilities to submit restructuring plans by October 1996, and allowed them a reasonable opportunity to recover stranded costs. From 1997 to 1998, the PSC approved restructuring orders for six utilities in the state, and in 1999 it ordered utilities to submit reports to monitor competition.

There has been substantial friction between the PSC and state legislators regarding the nature and pace deregulation in the state. For example, in February 1998 a bill was introduced saying the current PSC plan fails to protect consumers from price spikes.[47] The bill called for competition in electric generation no later than March 1, 2000 for all consumers. However, retail access has not materialized the way state lawmakers originally anticipated. According to one source, "the choices, which were never especially eye-popping to begin with, are going out like a bad string of Christmas lights."[48]

North Carolina. North Carolina opened a docket exploring retail competition in the state as early as 1997, but little progress has bee made since that time. In April 2000, the Study Commission on the Future of Electric Service in North Carolina submitted a report to the legislature with recommendations to open retail electricity markets by January 2005.[49] In January

2001, however, the Commission changed its mind and recommended a much slower approach towards deregulation of the retail electric industry.

North Dakota. There has been no substantial legislative or regulatory activity in North Dakota suggesting a move towards retail electric competition.

Ohio. Ohio is in its third year of retail direct access, and is seeing a modest response from suppliers and customers. Almost all of those customers switching are moving from one of three incumbent FirstEnergy companies with relatively high Standard Offer rates.[50] Two suppliers are actively marketing in the state. However, the Ohio Consumer Counsel has cautioned about "continuing cause for concern about the health of the state's electric marketplace and the potential long-term risks for Ohio's residential consumers."[51]

Oklahoma. The Oklahoma Corporation Commission, along with the Oak Ridge National Laboratory, recently completed a comprehensive study on the economic impact of electricity restructuring on that state. The report, which was done in two phases, concluded that under a restructured electric market average prices to customers could be 5% to 25% higher than regulated rates.[52] The first phase of the study had concluded that a general rise in electricity prices of about 1¢/kWh should occur under the base scenario for a restructured electricity market. The study also concluded that, if gas prices rose 53% from the base scenario, market prices would be roughly 2¢/kWh higher than regulated prices.

Oregon. The Oregon Public Utility Commission ("OPUC") studied retail electric competition for residential customers and concluded that now was not the time to proceed with competition for all retail customers. Under Oregon's electric restructuring law, direct access has been available for non-residential customers while residential customers have access to portfolio options through their incumbent utility. The OPUC report concluded that there was little evidence of competition and it could not conclude how well competition would work for even the largest customers.[53] The report also found that there would likely be few competitors offering service, the cost of implementing a competitive market for residential customers would exceed the benefits, competitive retail power markets have not been in place in other states long enough to learn from their experiences, and residential customers are not well suited to assess or manage the risks of a competitive retail market.

Pennsylvania. Restructuring in Pennsylvania has been underway since legislation was passed in 1996. In general, Pennsylvania is regarded as one of the states that has been successful in its restructuring program. However, even here there are concerns being raised, as noted in a recent report from the Consumer Federation of America:

> In Pennsylvania retail competition has been imploding [based on data supplied by the Pennsylvania Office of the Consumer Advocate]. After peaking at just over 500,000 customers who had voluntarily switched, the number has now been cut in half. Pennsylvania has assigned almost as many customers by a negative option, as have chosen voluntarily to switch.[54]

Rhode Island. In 1996, Rhode Island became the first state to phase-in retail competition when it enacted The Rhode Island Utility Restructuring Act of 1996 (HB 8124). By June 1999, about 2,000 customers out of the State's 456,000 had chosen alternative generation suppliers. In 2001, the Rhode Island Public Utility Commission released a report indicating that the number of customers leaving the competitive market "increased dramatically in 2000."[55] But the report also stated that retail access had provided only modest customer savings. More recently, the legislature passed legislation allowing retail access customers to return to Standard Offer and Last Resort Service.

South Carolina. Retail competition legislation was introduced in South Carolina in early 1999. The bill anticipated phased-in competition over 6 years. In 2000, another restructuring bill was introduced. Despite these legislative efforts, no restructuring bills have yet been passed.

South Dakota. South Dakota's retail electric prices are among the lowest in the nation and no serious consideration of restructuring is expected in the state.

Tennessee. There has been little activity in Tennessee regarding electric restructuring, although the legislature has authorized several studies looking into the possibility of retail direct access.

Texas. Some proponents of retail competition have cited Texas as an example of a successful program. For example, in a recent report to the legislature, the Public Utility Commission of Texas stated that as of December 2002, residential customers had at least three choices for electric service providers, with some areas offering as many as ten residential providers.[56] However, the experience from a customer's perspective is at best mixed. The Texas Office of Public Utility Council reported that rate increases of $1.7 billion to small business and residential customers who remain with their default supplier have been approved.[57] The Consumer Federation of America wrote of the Texas restructuring program:

> Prices have been rising relentlessly in Texas for both default utility service and the service offered by competitors, so there are no consumer benefits from competition. In fact, the only things rising faster than prices in Texas are consumer complaints—they quadrupled in the second year of restructuring. It should come as no surprise, then, that few residential customers have switched in the context—93 percent are served by their old utility.[58]

A spokesperson from the Southwest Regional Office of Consumers Union noted that "The latest tall tale to come out of Texas is the one about how the state has succeeded on electric deregulation while everyone else failed." She noted that "[m]ost consumers in the state are paying more for electricity today than before deregulation—a lot more."[59]

Utah. The deregulation task force authorized by the Utah legislature to explore restructuring was initially favorable to the idea, although it recommended a slow approach. No concrete legislative or regulatory steps, however, have been made so far. In March 2001, the

legislature changed the name of the Electrical Deregulation and Customer Choice Task Force to the Energy Policy Task Force.[60]

Vermont. The Vermont Public Service Board ("PSB") opened a docket exploring the restructuring option as early as 1995. A year later, the PSB called for retail competition in Vermont.[61] During the next few years, several pieces of restructuring legislation were introduced but no action was taken on any of them.

Virginia. The Virginia legislature enacted the Virginia Electric Utility Restructuring Act in 1999 (SB 1269). This law was intended to phase-in retail direct access between 2002 and 2004, as well as to "deregulate" generation and create a regional transmission entity. In January 2003, the Virginia State Corporation Commission ("SCC") issued a report to the Governor recommending that retail competition be suspended and recommending that retail rates and service be "rebundled."[62] The SCC report noted that "retail electric choice is stalled or not developing in almost all of the United States, including Virginia." It acknowledged that there were some initial indications of success in states like Pennsylvania, but concluded that these were largely the result of regulatory action in setting market rates at artificially high levels to encourage competitors.[63] The report also concluded that proceeding with retail competition "poses significant risks" while "not providing benefits to Virginia customers." It noted that a failure in the state was not likely to cause a California-like catastrophe, but could result in "significant price increases and volatility" and degraded reliability. The governor is not heeding the advice of the SCC, and is instead proposing a legislative compromise measure that is "not pushing deregulation back but not pushing it forward either."[64]

Washington. The Washington Utilities and Transportation Commission initially favored restructuring through a gradual approach. The Washington legislature entertained several bills addressing future unbundling of services by utilities. However, to date no restructuring bills have been enacted.

West Virginia. In 1998, the West Virginia Public Service Commission filed a report concluding that deregulation was not in the public interest.[65] This conclusion recognized that West Virginia has some of the lowest retail rates in the nation, and restructuring would likely increase rates.

Wisconsin. The Wisconsin Public Service Commission ("PSC") has submitted several reports to the legislature regarding restructuring. In November 1997, the PSC issued its final decision on electric industry restructuring but did not recommend a move towards retail access until 2000.[66] No comprehensive restructuring plans have been implemented by legislators or regulators since that time.

Wyoming. The Wyoming Public Service Commission released a study on restructuring in Wyoming and lawmakers engaged in a series of hearings on electric industry restructuring.[67] None of these efforts, however, have resulted in significant moves towards retail competition in the state.

Endnotes

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[5] H.B. 1114 (2003). The final bill includes a concession to large industrial customers, calling for a study as to whether retail choice for large customers is feasible without increasing costs to other customers.

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[35] Legislative Electric Energy Task Force, January 15, 2000 Periodic Update to the Legislature.

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[41] *See id.* at 20.

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