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VIA E-MAIL AND U.S. MAIL

Mr. Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

**RE: ELECTRIC COMPETITION ADVISORY GROUP - COMMENTS ON OTHER
PARTIES' RESPONSES TO QUESTIONS DATED MARCH 19, 2003**

Dear Mr. Johnson:

APS, RUCO, TEP and TRICO's comments on retail competition.

Constellation NewEnergy, Inc. ("CNE") and Strategic Energy, L.L.C. ("SE") strongly disagree with the assertions that retail competition is a failed experiment, and that customers have seen few benefits. Competitively served load has tripled in the U.S. in the past three years. Competitive retailers now serve over 49,000 MW's in the U.S. that have direct access. These figures represent a greater volume than the peak load for New England, New York or the California ISO. In addition, Canada has recently opened two of their provinces to retail electric competition (i.e., Ontario and Alberta). CNE currently serves nearly 6,000 MW's of customer load nationally. SE serves over 3,300 MWs of customer load nationally and is entering two new markets in 2004 with plans for expansion every year thereafter.

There is recognition in both the AECC and APS comments that the structure of the settlement and the CTC collection were significant factors in customers' interest in retail competition. The ability to receive a lower negotiated rate under the settlement, even to the detriment of having a meaningful generation credit, when coupled with CTC recovery, was perceived to be a better outcome for the large consumers. The settlement, however, made it uneconomic for ESPs to provide retail services in Arizona based upon market conditions. Everyone knew that by adopting the settlement, it was likely the retail market would be sacrificed, and it was.

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Additionally, California's events should not be the bellwether for Arizona and its pursuit of retail electric markets. California is finally on a path to recovery from its earlier missteps of market design, none of which have been implemented in Arizona. Additionally, as a result of the new administration, there is optimism that retail electric markets will soon be re-opened, and in such a way so as to preserve the financial health of the utilities. These two ideas do not need to be in conflict: competitive retail electricity markets and utility financial integrity.

CNE and SE would agree that competition has developed more robustly for the commercial and industrial segment, while retail competition in the residential segment has been extremely modest (less than 2% penetration by load). There may be some rationale for differentiating the utilities' obligation to serve as a result of the way retail competition has developed. It would seem that utilities will continue to have an obligation to serve, plan and manage a portfolio of supplies for residential retail load, as they have little to no alternatives to a regulated service. However, the utilities' obligation to serve for commercial and industrial customers may be limited to a short-term purchase obligation of somewhere between one month and less than one year forward. This structure accomplishes several objectives, some of which the utilities have identified as problematical.

1. The utilities will not have to build or buy supplies under long-term arrangements for C&I load, above a specified threshold. The idea will be to limit the potential for cost reallocation associated with longer term purchases as the retail electric market becomes more robust. Many states in the east have recognized that there needs to be a link between the term under which utilities purchase supplies and the customer commitment. These states have also recognized that C&I customers have options for obtaining services from competitive providers. Therefore, the need for a regulated service is lessened. In these states, they have recognized that a utility default service should not impede a customer's ability to access a competitive alternative. Impeding a customer's ability to access a competitive alternative could be through requiring term commitments from C&I customers to receive utility service and/or implementing an exit fee when customers leave. The closer aligned a utility's supply contract is with a C&I customer's term commitment, the less the utility has risk exposure for recovery of costs and the more freely customers may make choices about their suppliers.
2. Customers will know their obligation to utility service, which should be as short as possible.
3. Utilities' price for short-term service should reflect a market price for electricity on a retail basis, plus transmission and ancillary services costs, plus any administrative cost associated with securing a supply for the customer.

4. Barriers to customers exiting and returning are removed because the supply is a short-term market product. Stranded costs are not being created.

TEP & Cooperatives comments on the AISA.

A fundamental concern of CNE and SE is preserving the Arizona Independent Scheduling Administrator. TEP and TRICO have recommended the elimination of the ISA, which CNE and SE have strongly opposed. The ISA is tasked with ensuring that all market participants have equal access to transmission facilities on a non-discriminator basis. Transmission access must be open and unfettered in order for wholesale and retail competition to develop properly. The results of a recent study on PJM released on September 23, 2003, conclude that consumers in the Mid-Atlantic region received benefits of over \$3 billion in total savings in 2002 and that future savings from existing competitive wholesale market restructuring will total over \$28 billion.

CNE and SE support a wholesale market design that promotes open access, price transparency and competition. Wholesale markets with these specific elements will improve retail competition and demand response. In return, a stronger retail market will increase liquidity and depth in the wholesale forward market for electricity. Open competitive market design will provide better customer choices and advancement of new technology and services, including distributed generation, renewal resources, energy efficiency and other energy conservation technologies.

TEP, RUCO and Trico comments limiting customer access to the market.

CNE and SE are concerned and strongly disagree with the recommendations regarding rescinding competition or limiting customer size. The recommended rescission of competition for all customers under 3 MW's would discourage most retail providers from entering the Arizona market. As a result there would be a substantial barrier to meaningful development of retail competition in Arizona. Additionally, in no other market that has retail competition has such a barrier been erected. It is even more disturbing to propose such a limitation to participation in retail markets after collection of CTCs have been recovered. Moreover, the types of customers who have opted for choice in other states and who are showing interest in the Arizona market is far less than the 3 MW threshold that is being proposed.

CNE and SE support retail access for all commercial and industrial customers with interval meters. In addition, CNE and SE advocate for a provision that allows association/industry groups and customers groups to aggregate their meters. The large customers and customers groups are more sophisticated and are better able to manage the risk and rewards of a competitive market. CNE and SE recognize that competition in the residential market has been slower to develop and would advocate that some form of standard offer service be available for this customer class.

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Participation in markets is customer initiated. Larger customers have demonstrated that retail competitive markets are important to their ability to remain competitive. Additionally, a lot of the administration and marketing required for smaller accounts, at this time, makes residential retail markets cost prohibitive.

TEP's request not to unbundle tariffs.

CNE and SE believe that the requirement to unbundle their tariffs is not unreasonable or burdensome to the incumbent utilities. Unbundling of the tariffs provides meaningful information to customers on all of the component costs that make up their electricity bill and the requirement should not be rescinded. We could also mention the fact that an unbundled bill only allows the customer access to more of their own information and empowers them to make better decisions with regard to their electricity demand and procurement.

Trico's comments on competitive services.

CNE and SE also disagree with comments that the utilities should be allowed to offer competitive services. CNE and SE support the position that the utilities may offer competitive services through an unregulated competitive affiliate with proper separation and affiliate codes of conduct. As stated in our previous response we would recommend the strengthening of the current codes of conduct to be more stringent and thus avoid the blurring of lines between regulated and non-regulated entities.

CNE and SE appreciate the opportunity to participate in the Electric Competition Advisory Group and to offer these additional comments. CNE and SE encourage the Commission to continue its progress toward a vibrant unencumbered retail market.

Sincerely,

SACKS TIERNEY P.A.



Marvin S. Cohen
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and Strategic Energy, L.L.C.

MSC/lmo