

ARIZONA CORPORATION COMMISSION

COMMISSIONER JIM IRVIN _____

Decision No. _____

Dissenting Opinion

It has been just over three months since the Retail Electric Competition Rules were stayed in the name of consumer protection. During this time, we have seen several changes to the Rules adopted in 1998 – proposed and adopted behind closed doors – without any opportunity for members of the public to voice their concerns and opinions regarding electric restructuring in Arizona. Granted, the law requires that the Commission hold at least one public comment session after forwarding the changes to the Secretary of State. But the law also requires that nothing substantive can be changed at this juncture without starting the process from the beginning – once again. Although my position on this closed process is well documented, my approach has always been to listen to proposed changes in a public forum, and decide whether they are in the public interest prior to adoption. In my opinion, while most of the cosmetic changes today were needed for clarity, the majority of substantive changes favors utilities and large industrial consumers, leaving residential, small business and many commercial consumers in the same position, at best and if not worse, than before the changes were adopted.

One glaring example of how a utility gained by proposed changes includes the deletion of the affiliate transaction rules (rules which separate regulated and competitive operations). No other state has ignored this important safeguard, designed to prevent against the practices of cross-subsidization, abuse of certain market advantages as well as

the sharing of sensitive competitive information with affiliates. Under a proposal submitted by Commissioner West, incumbent utilities would have been allowed to offer competitive service without creating a separate affiliate, thereby rendering competition dead upon arrival. Cooler heads prevailed, but the code of conduct eventually adopted allows for much less stringent oversight of how a Utility Distribution Company (UDC) will share its costs with its unregulated affiliate. Winner – Utility Companies; Losers – All classes of customers and new market entrants.

Another example of why the changes favor industry involves the stranded cost order (see dissenting opinion) and the conforming changes to the Rules which allow for stranded investment recovery. Under the old system, utilities would essentially have to divest themselves of assets to arrive at a solid, tangible stranded cost figure which would be recovered over a period of time. Here, consumers would know in advance what each Affected Utility's stranded cost figure was prior to competition, and the new system would be protected by breaking up the market power held by a UDC. The changes now allow for more options, including the net revenues lost methodology which bases stranded cost on estimates and projections. Moreover, under option #5, Affected Utilities will now be able to present the Commission with whatever plan or methodology they formulate, as long as they can prove it is a legitimate method. Under the new order, Arizona consumers may never know what they will be paying for in stranded costs until they have paid the last penny. Advantage – Utility Distribution Companies; Disadvantage – all consumers / ratepayers.

The ability for entities to self-aggregate their loads has been eliminated, and aggregation itself has come under fire with the new changes. Under the rules, only those

entities with loads of 40kw or higher can aggregate through an ESP to a minimum of 1mW, thereby denying residential consumers the opportunity to organize themselves into a larger purchasing entity. Any consumer should be able to aggregate its load with others without the qualification that it meet minimum load requirements. Losers – residential consumers, small commercial customers and government entities.

Finally, although Solar technology has overwhelming support in Arizona – the state with the most sunny days in the nation – the Environmental Standard was completely eliminated. In eliminating this section from the Rules, my colleagues proclaim that they, “do not like government mandates.” However, I find it ironic that such statements are made in an Open Meeting designed to adopt Rules mandating the electric industry to restructure itself. Nevertheless, the opportunity for Arizona to foster development of energy technologies to protect the environment is now, and the economic advantage in keeping such development within our state¹ can be found in billions of dollars in new jobs, industries and product development created by such research. The federal government is suggesting that 7.5% of all energy produced in the United States come from renewable sources (with legislation to follow) – far greater than the modest 1% included in Arizona’s Rules. Those states with the foresight to address this issue now will most likely be grandfathered into any future minimum mandates handed down from Washington, D.C.

Not surprisingly, utilities argue that the solar portfolio standard is too expensive, but provide no concrete evidence to support such a claim. In fact, various meetings of the

¹It should be noted that solar power could also be imported from out of state.

Solar Portfolio Standard Subcommittee – created to address this specific issue in the Rules – determined that the cost would be minimal to consumers (ranging from .15 cents to \$8.40 per year per household), 2/3 of whom support environmental energy development in Arizona. Winner – None; Loser – Arizona.

As we move forward in our effort to bring competition to Arizona, I am wary that this state may fall victim to the same pitfalls and shortcomings found in others which are paying dearly for choice in service providers. I have been criticized by one Commissioner for challenging the process, and will no doubt be criticized for pointing out specific deficiencies in the newly adopted Rules. But I remain committed in repeating that all-important question which must be answered prior to final adoption of the Rules – how are these changes in the interest of the public and the average consumer? I challenge my colleagues to provide such an answer so that healthy debate can follow, and hopefully in an open fashion. Until then, the question remains unanswered, and I therefore cannot support the Retail Electric Competition Rules as amended by this Commission. For the reasons stated above, I respectfully dissent.