

Arizona Corporation Commission  
**BEFORE THE ARIZONA CORPORATION COMMISSION**  
**DOCKETED**

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JIM IRVIN  
COMMISSIONER-CHAIRMAN  
TONY WEST  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

APR 23 1999

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IN THE MATTER OF COMPETITION IN THE  
PROVISION OF ELECTRIC SERVICES  
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

DECISION NO. 61634

**ORDER**

Special Open Meeting  
April 14, 1999  
Phoenix, Arizona

**BY THE COMMISSION:**

On December 26, 1996, in Decision No. 59943, the Arizona Corporation Commission ("Commission") adopted rules which provided the framework for the introduction of retail electric competition in Arizona. These rules are codified at A.A.C. R14-2-1601 et seq. ("Rules" or "Electric Competition Rules"). Under the Rules adopted in December 1996, competition in the retail electric industry was to be phased-in beginning in January 1999.

The Commission adopted certain modifications to the Electric Competition Rules on an emergency basis on August 10, 1998, in Decision No. 61071. Interested parties were given an opportunity to file additional written comments to the Electric Competition Rules, and public comment meetings were held in Phoenix and Tucson. On December 11, 1998, in Decision No. 61272, the Commission adopted the Emergency Rules with the Commission Utilities Division Staff's ("Staff's") proposed amendments in their entirety. The Commission held an Open Meeting on December 31, 1998, after the close of normal business hours, in order to issue Decision No. 61309, which denied the numerous Applications for Rehearing of Decision No. 61272.

On January 11, 1999, the Commission issued Decision No. 61311 which stayed the effectiveness of the Rules and related Decisions, and ordered the Hearing Division to issue a

1 Procedural Order to begin consideration of further comment and actions in the docket. By  
2 Procedural Order dated January 6, 1999, all interested parties and Affected Utilities were given the  
3 opportunity to file comments on procedural issues by January 20, 1999. Following receipt of those  
4 comments, a procedural conference was held on January 22, 1999, at which interested parties and  
5 Affected Utilities appeared and provided further comments. As a result of the procedural  
6 conference, the Hearing Division issued a Procedural Order dated January 26, 1999 which required  
7 interested parties and Affected Utilities to file additional proposed changes to the Rules by January  
8 29, 1999. On February 5, 1999, the Hearing Division issued a recommended rulemaking order. As  
9 part of the February 5, 1999 recommendation and the Procedural Order dated February 12, 1999, the  
10 parties were given until February 17, 1999, to file written exceptions to the recommended changes  
11 to the Rules. After reviewing the written exceptions, by Procedural Order dated March 12, 1999,  
12 the Hearing Division recommended additional changes to the Rules.

13 The Rules attached hereto as Appendix A are in conformance with Decision No. 61311 and  
14 the January 26, 1999 and March 12, 1999 Procedural Orders. Adoption of the proposed Rule  
15 amendments will allow the Commission to more effectively implement the restructuring of the retail  
16 electric market by providing stakeholders with details of the structure and process of the introduction  
17 of competition into Arizona's electric industry.

18 The proposed Rules contain the following major provisions:

19 R14-2-201 et seq. contain various conforming changes to the existing Rules necessitated by  
20 the revisions to Article 16.

21 R14-2-1601 sets forth definitions necessitated under the Rules. The definitions were revised  
22 based on the comments of the parties and based on changes made to other Rules.

23 R14-2-1602 is a complete replacement of the prior section and establishes the mechanism  
24 and timing for opening an Affected Utility's service territory to competition. To bring the benefits  
25 of electric competition to the citizens of Arizona as quickly as possible, R14-2-1602 provides that  
26 the Commission will set the date for competition to begin in an Affected Utility's service territory  
27 upon the resolution of its Stranded Cost and Unbundled Tariffs by final Commission Order. In the  
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1 event an Affected Utility's service territory is opened for competition prior to January 1, 2001, its  
2 customers will be eligible to receive competitive generation in accordance with the phase-in  
3 provisions set forth in R14-2-1604. R14-2-1602 further provides that a competitive electric affiliate  
4 of an Affected Utility will not be permitted to compete in the service territory of another Affected  
5 Utility until its own affiliated Affected Utility's service territory is opened to competition.

6 R14-2-1603 establishes which entities are required to apply to the Commission for a  
7 Certificate of Convenience and Necessity and what information must accompany the application.  
8 The revisions to this rule are not substantial, except that a new requirement is added that applicants  
9 must demonstrate how they will comply with the provisions of re-numbered section 1617.

10 R14-2-1604 establishes the timetable for implementation of retail electric competition for  
11 the various classes of customers. This Rule provides that upon the opening of its service territory  
12 to competition, an Affected Utility shall make 20 percent of its 1995 system retail peak demand  
13 available for competitive generation supply on a first-come-first-served basis. As part of the 20  
14 percent, each Affected Utility is required to reserve an increasing percentage for residential  
15 customers according to a set schedule. All customers shall be eligible for competitive services after  
16 January 1, 2001. The Rule requires Affected Utilities to report to the Commission on possible  
17 mechanisms, including rate reduction, to provide benefits to those customers not eligible for  
18 competitive electric services during the transition period.

19 R14-2-1605 establishes that all providers of Competitive Services require a Certificate of  
20 Convenience and Necessity. Although this section has been substantially revised for clarity by  
21 moving its definitions into the definition section of the Rules, R14-2-1601, the changes have not  
22 substantially changed the effect of this section. The revisions to the Rules have eliminated reference  
23 to the concept of self-aggregation as all Aggregators must be ESPs. Competitive Services are all  
24 aspects of retail electric service except Distribution Service, Standard Offer Service, transmission  
25 and FERC-required ancillary services, Must-Run Generating Units Services, provision of customer  
26 demand and energy data by Affected Utilities and Utility Distribution Companies ("UDCs") to  
27 Electric Service Providers ("ESPs"), and those aspects of metering service set forth in re-numbered  
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section 1612(K).

R14-2-1606 requires UDCs to offer Standard Offer Service after all retail customers are eligible for competitive services in 2001, and establishes those companies as Providers of Last Resort. The definition in R14-2-1601 of Provider of Last Resort was modified to conform with the requirements in HB 2663. To add clarity, the Rule was modified to refer to defined terms rather than redefining those terms. The Rule is revised to require investor-owned UDCs providing Standard Offer Service to purchase power through the open market as opposed to competitive bid. The revisions eliminate the requirement that UDCs' power contracts in excess of 12 months contain ratchet down provisions. This section also establishes the requirements for Standard Offer Service tariffs and access to distribution systems, and provides for Commission review and approval of Competitive and Noncompetitive Service rates.

R14-2-1607 establishes the criteria the Commission will consider in determining Stranded Cost recovery. This Rule would allow, but not guarantee, Affected Utilities a reasonable opportunity to recover unmitigated Stranded Cost. The revisions to this rule permit the possibility of recovering market transformation costs incurred after December 1996 and the customer option of an exit fee.

R14-2-1608, as revised, requires that a System Benefits Charge be paid by all customers. The Affected Utilities or UDCs must file for review of the System Benefits Charge at least every three years. The revisions to the definition of System Benefits add Consumer Education to those charges that may be included in the System Benefits Charge and delete reference to market transformation costs, which are more properly considered as Stranded Cost.

Former R14-2-1609, which had established a solar portfolio, has been eliminated, as such a program as contemplated in the Rules is prohibitively expensive and would hinder competition in Arizona. All subsequent Rules have been re-numbered accordingly.

Re-numbered R14-2-1609 requires that Affected Utilities provide nondiscriminatory access to transmission and distribution facilities. It contains a policy statement that the Commission supports the development of an Independent System Operator or, at a minimum, an Independent System Administrator. The revisions include a new subsection that clarifies that UDCs will retain

1 their obligation to assure adequate transmission import capability to meet the load requirements of  
2 all their distribution customers. Another new subsection directs the Arizona Independent Scheduling  
3 Administrator to identify statewide services to be settled on and to develop fair and reasonable  
4 pricing and settlement mechanisms for services from Must-Run Generating Units.

5 Re-numbered R14-2-1610 provides that the service territories of Arizona electric utilities that  
6 are not Affected Utilities or Public Power Entities are not open to competition and that those non-  
7 Affected Utilities are not eligible to compete for customers in the service territories of Affected  
8 Utilities or Public Power Entities. However, a non-Affected Utility may compete in the service  
9 territories of Affected Utilities or Public Power Entities if the non-Affected Utility allows reciprocity  
10 and opens its service territory to competition.

11 Re-numbered R14-2-1611 sets forth the parameters of allowable rates for Competitive  
12 Services and requires that tariffs containing the rates be filed with and approved by the Commission.  
13 The rates may be set at a maximum level, subject to discount. Rates cannot be discounted below  
14 cost. Increases in maximum rates must be approved by the Commission. This Rule was not  
15 substantially changed.

16 Re-numbered R14-2-1612 provides consumer protections against the unauthorized changing  
17 of providers and establishes billing requirements. All providers of electric service are required to  
18 meet all applicable reliability standards, and any Electric Service Provider is required to provide at  
19 least 45 days notice of its intent to cease providing service to a given customer. This Rule also sets  
20 forth the various metering protocols and requires the Director, Utilities Division to issue operating  
21 procedures and standards by May 1, 1999. Revisions to this rule eliminated reference to the  
22 Working Group on System Reliability and Safety, as its functions are now part of the ISA Working  
23 Group, and clarifies that all bills, including those for Standard Offer Service, shall contain certain  
24 cost elements.

25 Re-numbered R14-2-1613 lists the reports Affected Utilities, UDCs and ESPs must file with  
26 the Commission. The revisions to this Rule are minor, and except for eliminating the report on a  
27 solar portfolio, nonsubstantive.  
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Re-numbered R14-2-1614 contains a new subsection requiring the Director, Utilities Division to implement a Consumer Education program as approved by the Commission, but otherwise was not changed substantially.

Re-numbered R14-2-1615 requires competitive generation assets to be separated from an Affected Utility by January 1, 2001. An Affected Utility may transfer its competitive generation assets or services either to an affiliate or to an unaffiliated third party. This section was revised substantially to clarify that an Affected Utility or UDC may not provide Competitive Services beginning January 1, 2001. Language was added to make generation cooperatives subject to the same limitations as their member cooperatives, and language was added to clarify services that an Affected Utility or UDC may continue to provide.

Re-numbered R14-2-1616 was substantially revised and now requires that Affected Utilities that provide Noncompetitive Services and Competitive Services through a competitive electric affiliate file a Code of Conduct to prevent cross-subsidization of services and other anticompetitive practices. The Code of Conduct is subject to Commission approval.

Re-numbered R14-2-1617 requires that Load-Serving Entities provide customers with certain information so that they can make comparisons among competing suppliers and decide which supplier's product best meets their needs. This Rule also requires that each entity prepare a statement of its terms and conditions of service and requires that certain basic information be included. Revisions to the Rule require information concerning the resource portfolio to be provided upon request, if reasonably known.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

- 1. Decision No. 59943 enacted R14-2-1601 through -1616, the Retail Electric Competition Rules.
- 2. Decision No. 61071 adopted certain modifications to the Retail Electric Competition

1 Rules and conforming changes to R14-2-203, R14-2-204 and R14-2-208 through R14-2-211  
2 (collectively the "Emergency Rules") on an emergency basis.

3 3. Decision No. 61071 adopted the Emergency Rules on a permanent basis, including  
4 Staff's additional changes proposed on November 24, 1998.

5 4. Decision No. 61311 stayed the effectiveness of the Emergency Rules and related  
6 Decisions.

7 5. Decision No. 61311 ordered the Hearing Division to issue a Procedural Order to  
8 begin consideration of further comment and actions in this docket.

9 6. By Procedural Order dated January 26, 1999, all interested parties and Affected  
10 Utilities were ordered to file by January 29, 1999 additional proposed changes to the Rules.<sup>1</sup>

11 7. On February 5, 1999, after consideration of the comments filed on January 29, 1999,  
12 the Hearing Division issued its recommended changes to the Rules.

13 8. By cover letter accompanying the February 5, 1999 proposed rulemaking order and  
14 by Procedural Order dated February 12, 1999, the parties were given until February 17, 1999 to file  
15 written exceptions to the February 5, 1999 Recommended Order.

16 9. At a Special Open Meeting on April 14, 1999, the Commission adopted the proposed  
17 Rules and revisions attached hereto as Appendix A, and incorporated herein by reference.

18 10. The Economic, Small Business and Consumer Impact Statement is set forth in  
19 Appendix B, attached hereto and incorporated by reference.

20 11. The Concise Explanatory Statement is set forth in Appendix C, attached hereto and  
21 incorporated herein by reference.

### 22 CONCLUSIONS OF LAW

23 1. The Commission has the authority for the proposed revised Rules pursuant to Article  
24 XV of the Arizona Constitution and A.R.S. §§ 40-202 , 40-203, 40-250, 40-321, 40-322, 40-331,  
25 40-332, 40-336, 40-361, 40-365, 40-367 and A.R.S. Title 40, generally.

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1 The parties were directed to make this filing during a pre-hearing conference held on January 22, 1999. The January 26, 1999 Procedural Order summarized the oral Orders made at that pre-hearing conference.

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2. The proposed revisions to the Rules are substantive in nature.

3. The proposed revised Rules as set forth in Appendix A, and the Economic, Small Business, and Consumer Impact Statement set forth in Appendix B should be forwarded as soon as possible to the Secretary of State for Notice of Proposed Rulemaking.

4. The date for public comment hearings on the proposed revised Rules and a schedule for taking comments and responses from all interested parties prior to public comment hearings should allow sufficient time for interested parties to evaluate the proposed revised Rules and prepare comments, and to respond to the comments of other parties.

**ORDER**

IT IS THEREFORE ORDERED that the proposed Rules R14-2-201 through -207, -210 and -212, and R14-2-1601 through -1618, as set forth in Appendix A, and the Economic, Small Business, and Consumer Impact Statement set forth in Appendix B shall be forwarded as soon as possible by the Director of the Commission's Utilities Division to the Office of the Secretary of State for Notice of Proposed Rulemaking.

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IT IS FURTHER ORDERED that the Hearing Division issue a Procedural Order scheduling oral proceedings on this matter as soon as the proposed revised Rules as set forth in Appendix A, and the Economic, Small Business, and Consumer Impact Statement set forth in Appendix B have been forwarded to the Secretary of State for Notice of Proposed Rulemaking.

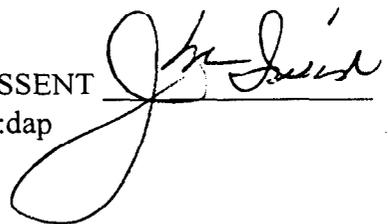
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	
COMMISSIONER-CHAIRMAN	COMMISSIONER
	COMMISSIONER

IN WITNESS WHEREOF, I, STUART R. BRACKNEY, Acting Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 23 day of April, 1999.

  
STUART R. BRACKNEY  
ACTING EXECUTIVE SECRETARY

DISSENT   
JR:dap

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SERVICE LIST FOR: ELECTRIC COMPETITION

DOCKET NO. RE-00000C-94-0165

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