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Interim Executive Secretary

**ARIZONA CORPORATION COMMISSION**

June 11, 2003

Debbie Davenport, Auditor General  
Office of the Auditor General  
2910 North 44<sup>th</sup> Street, Suite 410  
Phoenix, Arizona 85018

Re: Sunset Review of A.R.S. § 40-202(B)(4)

Dear Ms. Davenport:

With your June 4, 2003, letters to Arizona Corporation Commission (ACC) Chairman Marc Spitzer and Interim Executive Secretary James G. Jayne, you supplied a revised preliminary draft of the report which your staff prepared pursuant to A.R.S. § 40-202(O) and indicated that the revision reflects your understanding of changes agreed to in ACC's meeting with your staff on May 14, 2003. You also asked that the ACC provide written comments on the revised draft by Wednesday, June 11, 2003.

Accordingly, you will find ACC's comments on the revised draft enclosed. At your suggestion, I am also sending an electronic copy of the comments and this letter to you by e-mail so that they may be included in any electronic dissemination of the report.

Sincerely,

Kenneth C. Rozen  
Executive Consultant for Government Affairs

c: Chairman Spitzer  
James Jayne, Interim Executive Secretary  
Ernest Johnson, Utilities Division Director

Enclosure

Arizona Corporation Commission  
Comments on the June 4 revised preliminary draft report by the Office of the Auditor General  
Pursuant to A.R.S. § 40-202, Subsection O.  
June 11, 2003

The Arizona Corporation Commission acknowledges and appreciates the many changes that the Office of the Auditor General made to the draft in response to the Commission's May 13, 2003, written comments on the preliminary draft dated May 1, 2003. The Commission also appreciates this opportunity to offer a final written response, and would like to take advantage of it by reiterating and elaborating on the Commission's previous comments concerning the focus of the review.

The introductory paragraph correctly notes that A.R.S. § 40-202(O) authorizes the Auditor General to review A.R.S. § 40-202(B)(4), which in turn, confirms the Commission's authority to require an electric distribution utility under Commission jurisdiction to provide a) billing and collection services, b) metering, and c) meter reading on a competitive basis. However, the introduction does not mention that A.R.S. § 40-202(O) expressly authorizes the Auditor General to perform a sunset review of the specified statutory provisions<sup>1</sup>, and instead, indicates that the review focused on the status of competition for the three subject services under Commission rules. Implicit justification for reviewing the status of competition under Commission rules, rather than performing a sunset review of the provisions of A.R.S. § 40-202(B)(4), appears to be offered in the statement "Since the Commission's authority is derived from the Arizona Constitution, no change or repeal of the statute could affect the Commission's ability to authorize competitive electric services."

The Commission understands that the wording of A.R.S. § 40-202(O) is unusual because agencies and programs, rather than statutory provisions, are conventionally the subjects of sunset reviews. Nonetheless, that the Commission's authority to regulate public service corporations rests apart from the legislature does not appear to constitute a relevant rationale for focusing the review on the status of competition under Commission rules, rather than on the extent to which the statutory provisions requiring that the three services be offered on a competitive basis remain appropriate and effective five years after they were enacted (Laws 1998, Chapter 209). However important the current status of electric competition would be to the context in which the specified provisions could be evaluated, the appropriateness and utility of the statutory provisions themselves, rather than the status of competition in the three services as affected by Commission rules, might as well have been the subject of the review.

To conclude, the Commission would recommend that the provisions of A.R.S. § 40-202(B)(4) remain as they are to serve as useful direction if competition, which is essentially nonexistent at present, develops in the future. Should that occur, the marketplace would provide a concrete context in which to evaluate the rules based on their practical application. If experience were to show that rule changes are warranted, such changes could be effected through the Commission's rule making process.

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<sup>1</sup> A.R.S. § 40-202(O) states "The provisions of subsection B, paragraph 4 of this section are subject to *sunset* review by the auditor general in 2003." (emphasis added)