

**Arizona Independent Scheduling Administrator Association
29th Special Board Meeting**

November 6, 2000
Grand Canyon State Electric Cooperative Association, Inc.
120 North 44th Street, Suite 100
Phoenix, Arizona

APPROVED MINUTES

I. Call to Order

Acting Executive Director, Patrick J. Sanderson, called the meeting to order at 9:05 a.m.

II. Establish Quorum

A quorum of nine Board members was established.

Board Members Present: Ed Beck, Dennis Delaney, Lindy Funkhouser, Kevin Higgins, Larry D. Huff, Martin Ochotorena, Marcie Otondo, Vann E. Prater (via teleconference), Elizabeth Story, and Patrick J. Sanderson (Chair).

Others Present: Steven R. Henry, Jerry Smith (APS), Donald R. Allen, Robert S. Lynch, Barbara Jost and Stuart Caplan (via teleconference), Clint Wasser, and Peggy Drumm.

III. Welcome and Introductions

Pat Sanderson welcomed all present, and introductions were made.

IV. Appoint Secretary

It was agreed that Peggy Drumm would serve as the Corporate Secretary for the meeting.

V. Approval of Minutes (October 2, 2000)

Dennis Delaney asked for clarification on page four of the October 2nd minutes and requested that any further modifications of the FERC filing be approved beforehand by the Board. It was agreed to discuss the issue further under other business. Marcie Otondo moved the minutes be accepted as read. Lindy Funkhouser seconded the motion. The motion passed unanimously.

VI. Az FERC Filing Update

Pat Sanderson asked Barbara Jost and Stuart Caplan to provide an update on the FERC filing. Ms. Jost explained that as a result of the deficiency letter issued by FERC on October 5, APS and TEP have made independent filings. She has talked to FERC staff,

and they have assured her that they will act on the filing this month. FERC has received very favorable comments, urging quick action on the filing, from the ACC.

Mr. Caplan added that he does not expect that there will be substantive activities in response to the individual filings, since there were no substantive changes to the TEP or APS tariffs. The issues associated with the Protocols should have already been lodged in the Az ISA docket. To the extent any parties contest the APS and TEP filings, he expects APS and TEP to take the lead in responding.

In a brief discussion regarding the relevance of the California order to FERC action on the Az ISA filing, Ms. Jost and Mr. Caplan said they do not see the California order having any effect. It has been made very clear to FERC that the Az ISA situation is very different from the California restructuring.

VII. Discuss Az ISA Contingency Plans

Pat Sanderson explained that three contingency cash flow options have been provided in the Board packet:

- 1) December Implementation – Since approval was not received for November implementation, can December implementation be accomplished? Would need to know within three to four weeks in order to implement in December.
- 2) Additional Capitalization – Addresses how and how long the Az ISA could exist with additional capitalization, if FERC does not approve implementation in November or December. Assumes there would be a heavy legal burden initially; an additional \$250,000 would probably be needed.
- 3) Shut Down – If no approval from FERC and no additional capitalization, this option addresses what it would take to shut down the Az ISA by December 31. Would need to know by first part of December in order to take necessary steps as outlined.

Mr. Sanderson explained that these contingency options have been provided for Board discussion and direction. There was a discussion and clarification of the spreadsheets and specific line items, particularly committed legal costs.

Steve Henry explained the corporation dissolution process. Mr. Henry noted that it is a fairly simple process for a non-profit corporation. Two memos are included in the Board packet explaining the procedures. He noted that, according to the Az ISA By-laws, the Board would make the vote, and at least eight Board members would have to vote affirmatively in order to dissolve the corporation. The quorum and voting requirements would still be in place. Members would not vote on dissolution. Once dissolution articles are filed, the Az ISA would still be a corporation and can be sued; however, the only business that can be undertaken is winding up of business.

Mr. Henry explained that the wording of the capitalization agreements states that repayment is contingent upon approval of a funding mechanism for the Az ISA. In addition, the contributors of the capitalization amounts understood that the Az ISA did not have any assets or revenue to repay the promissory notes absent the implementation of a funding mechanism. Mr. Henry explained that notwithstanding the plain language of the capitalization agreements there existed the possibility that a holder of a promissory note might nevertheless seek a legal remedy. Based on the Az ISA By-laws, any remaining funds would go to charitable organizations.¹ It was considered that, arguably, the contributors would receive a prorated share, and then charitable organizations would receive any remaining funds, if any. Mr. Henry pointed out that if dissolution articles were filed, they could be revoked up to 120 days after the filing.

Mr. Henry explained that notices are sent out to claimants, who then have 120 days to make claim or they lose that right. Notice is published for claims that may be unknown, and those claimants have up to five years to make a claim. Members are not liable for debts and obligations. Directors have an obligation to act reasonably and prudently in financial matters. Mr. Henry recommended obtaining "tail coverage" for the period while the corporation is being dissolved, perhaps for two years. The length of necessary coverage was discussed further.

There was a discussion as to whether tail coverage would be obtainable if the promissory notes were not paid. It was suggested that the position of the contributors should be ascertained. Mr. Henry explained that the issue would be whether there was any malfeasance by the directors, i.e., would they have any liability. He said that the tail coverage could cost less than the \$26,000 for D&O current insurance, which is good until February. The tail coverage would then take the ISA through 15 months, which should be adequate. The likelihood of exposure to liabilities was discussed, and Mr. Henry said the capitalization loans would be the only possibility he could think of.

There was some discussion as to how dissolution would relate to the statute that requires an ISA. Mr. Henry said the ACC would have to talk to the TPs about that. It was also pointed out that the ACC rules indicate that if FERC does not approve the tariff, then the ACC may consider funding the ISA.

Upon questioning, Ms. Jost explained upcoming legal work commitments to include evaluation of the FERC order. She does not expect interventions in the TEP and APS recent filings, and if there are any interventions or protests that require responses, TEP and APS would most likely take the lead in defending their filings. If the FERC order is issued in November, FERC will either place the Az ISA docket on its public meeting agenda for its November 21 meeting or vote notationally. HLA will know by November 15 or 16 whether the filing will be on the November 21 agenda, although items could be added or deleted after that date. Draft orders are usually available the day of the Commission meeting. It was requested and agreed that if a draft is available, HLA will provide it to Peggy Drumm, who will, in turn, fax it out as soon as possible after it is

¹ See minutes of the December 1, 2000, Special Board meeting. It was determined that, according to the Az ISA Capitalization Agreements, any remaining funds would be distributed to the funding utilities.

released to interested Board members. Further, Ms. Drumm will e-mail the order after it is formally issued for those who want it.

The Board recessed for a break 10:30 a.m. and reconvened at 10:40 a.m.

Clint Wasser, CPA, reported on financial requirements related to a shut down of the Az ISA.

1. An annual information return (990) would need to be filed with the IRS and State Department of Revenue.
2. Payroll tax returns would need to be completed. It would be preferable if everything were completed by December 31, 2000. Otherwise, additional returns would have to be filed for 2001.
3. An annual financial disclosure form must be filed with the ACC.
4. Someone would have to handle selling the remaining assets and distributing the remaining funds.

Mr. Sanderson pointed out that the Board would have to meet on its own, utilizing the assistant chair provision, since there would be no payroll or staff to carry on those activities.

In regard to the December Implementation contingency plan, Mr. Sanderson emphasized that it is a two-step process, FERC approval and the TP Agreements. Because of the short timing involved, he proposed sending the agreements to the TPs prior to the FERC approval with the condition included that they would not become effective until FERC approval.

With regard to the Additional Capitalization contingency, he recommended that he send letters to the TPs regarding additional funding. The agreement could include a "not to exceed" amount, and the cash would be acquired through the invoicing process. He recommends getting the letters out as soon as possible, since the TPs would probably want to discuss it with the ACC.

Dennis Delaney expressed concern about spending dollars the Az ISA does not have. He does not want to obligate funds that are not there. There was some general agreement expressed. Marcie Otondo made the point that it is necessary to fund the FERC counsel until the end of November, since the largest obligation of the Az ISA is to get the FERC tariff approved, and without that the Az ISA is derelict in their duties. Lindy Funkhouser made the point that with the information that has been provided, to proceed now with shutting down the ISA would be close to acting in bad faith.

VIII. Staff Report

- a. **Financial Report.** Pat Sanderson pointed out that the final September financial statements are included in the Board package, since the ones provided at the

October 2 Board meeting were preliminary. Clint Wasser, CPA, then reviewed the preliminary October financial statements.

- b. TP Billing Process.** Pat Sanderson referred to the examples of three months billings provided in the Board package for review. They have been sent to the TPs for their review. He pointed out the principal and interest adjustment, which would allow the Az ISA to defer the debt repayment for a few months for cash flow purposes. Electronic fund transfer mechanisms are being set up for the payment processes.

IX. Other Business

Dennis Delaney said that any further modifications to the tariff should be approved by the Board, and there should be no changes to the tariff, the Protocols Manual or any language approved for filing. There was discussion to clarify what type of changes would not be allowed and to which documents of the filing this applied. Points were made that the FERC counsel needs to be able to defend the filing and make the appropriate changes to the pro forma agreements to become contracts, but no substantive changes would be made to the core legal documents without addressing them with the Board. It was generally agreed that no substantive changes would be made to the Protocols Manual, the Rate Schedule #1, or the ISA-TP and ISA-TP-SC Agreements without first addressing the changes with the Board. When the FERC order is issued, the order and any compliance changes will be addressed with the Board.

X. Next Board Meeting

The next Board meeting is scheduled for 9:00 a.m. Friday, December 1. All Board members would need to sign waivers, since there is less than a 30-day notice. In the event that all waivers are not received, a meeting is tentatively scheduled for December 6. The purpose of the meeting will be to discuss the status of the Az ISA FERC filing and the financial status of the Az ISA. The meeting locations are to be determined.

The following action items for the next meeting were noted:

- Tail insurance coverage quotes
- More complete accounting of worst case scenario
- Work-in-progress report from attorneys
- Discussion with TPs and ACC staff regarding additional funding
- Letters to TPs asking for additional funding or letter of credit to fund Az ISA for three to four months
- Letters asking TPs to sign the Agreements contingent upon FERC approval

XI. Adjourn

It was moved and seconded that the meeting be adjourned. The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Peggy A. Drumm, Acting Corporate Secretary