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BEFORE THE ARIZONA CORPORATION COMMISSION

2003 NOV 10 P 3:06

COMMISSIONERS

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- WILLIAM A. MUNDELL
- JEFF HATCH-MILLER
- MIKE GLEASON
- KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN, AND FOR APPROVAL OF PURCHASED POWER CONTRACT

DOCKET NO. E-01345A-03-0437

Arizona Corporation Commission

DOCKETED

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DOCKETED BY

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR AN ORDER OR ORDERS AUTHORIZING IT TO ISSUE, INCUR, OR ASSUME EVIDENCES OF LONG-TERM INDEBTEDNESS; TO ACQUIRE A FINANCIAL INTEREST OR INTERESTS IN AN AFFILIATE; TO LEND MONEY TO AN AFFILIATE OR AFFILIATES; AND TO GUARANTEE THE OBLIGATIONS OF AN AFFILIATE OR AFFILIATES

DOCKET NO. E-01345A-02-0707

ARIZONA PUBLIC SERVICE COMPANY'S RESPONSE TO MOTION TO CONSOLIDATE

Pursuant to the Rate Case Procedural Order issued on August 15, 2003, Arizona Public Service Company ("APS" or "Company") submits this Response to the Motion to Consolidate filed by the Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") on November 5, 2003. For the reasons set forth below, APS respectfully requests that the Chief Administrative Law Judge ("CALJ") not formally consolidate the already-completed Application for Financing Authorization, Docket No.

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1 E-01345A-02-0707 (“Financing Docket”) with the Company’s pending rate case, Docket  
2 No. E-01345A-03-0437 (“Rate Case Docket”). However, APS does not oppose  
3 consideration in the rate case of any relevant issues associated with the preliminary  
4 inquiry ordered in Decision No. 65796 (April 4, 2003).

5       Aside from the procedural issues of consolidation raised in Staff’s Motion, APS  
6 reiterates that neither APS nor any affiliate acted contrary to the Electric Competition  
7 Rules, Decision No. 61973, the Code of Conduct, or applicable law. There is no factual  
8 basis for any conclusion to the contrary, nor does APS believe that a contrary  
9 characterization was intended in Staff’s Motion, which would essentially prejudge the  
10 results of the preliminary inquiry directed by Decision No. 65796. Indeed, the term  
11 “preliminary inquiry” itself makes clear that there has been no determination of any  
12 inappropriate conduct.

13       **A. Formal Consolidation of the Financing Docket With the Rate Case**  
14       **Docket is Unnecessary, Procedurally Unwarranted and Would Cause**  
15       **Undue Confusion.**

16       Even though it will complicate the rate case and could be conducted in a separate,  
17 stand-alone docket, APS does not oppose the preliminary inquiry ordered by Decision No.  
18 65796 proceeding in the rate case. APS also acknowledges that some matters Staff  
19 apparently intends to evaluate in the preliminary inquiry could be viewed by others as  
20 related to some of the issues in the Company’s rate case. However, formally consolidating  
21 the Financing Docket and the Rate Case Docket—as opposed to simply directing that the  
22 preliminary inquiry proceed in the rate case—is procedurally unnecessary, is not  
23 supported by the standards for evaluating consolidation, could cause needless confusion  
24 and likely will create harmful uncertainty in the financial community.

25       The Financing Docket, as its caption articulates, did not itself involve a  
26 Commission inquiry into APS’ or its affiliates’ compliance with rules, laws or decisions,  
but was instead an application for financing authorization. That authorization was

1 received, and debt allowed by Decision No. 65796 has been issued. APS has complied  
2 with all conditions and requirements of that Decision. The parties to the Financing Docket  
3 are different from the parties to the Rate Case Docket. The procedural orders that  
4 governed the conduct of the Financing Docket are different from the Rate Case Procedural  
5 Order. And, a final decision has been issued in the Financing Docket. The final decision  
6 did direct Staff to “commence a preliminary inquiry” but did not require the preliminary  
7 inquiry to be conducted in any formal docket, including the Financing Docket. Under such  
8 circumstances, and particularly where one proceeding has concluded and a final order has  
9 been issued, the standards for consolidating “pending” actions under Rule 42(a), Ariz. R.  
10 Civ. P., are not met.

11           Moreover, the consolidation of the Financing Docket with the Rate Case Docket  
12 would cause unnecessary confusion for APS customers, the parties, potential intervenors,  
13 and Wall Street. In simplest terms, a customer reading a pleading or notice containing  
14 both captions could be confused as to whether or how the “authorization” of APS to  
15 “issue, assume or incur evidences of long-term indebtedness” is somehow involved in  
16 APS’ rate case. As the caption does not mention a “preliminary inquiry,” it certainly  
17 would not apprise customers of the purpose for consolidating these two dockets.

18           Also troubling is the very real likelihood that investors or Wall Street analysts will  
19 become concerned as to whether the authorization for the debt in Decision No. 65796 is  
20 somehow at issue in the Company’s rate case or dependent in some way on the outcome  
21 of the preliminary inquiry—neither of which is the case. Indeed, the debt was issued by  
22 APS and bought by investors on the express assumption that Decision No. 65796 was  
23 final. Moreover, formal consolidation could result in confusion for the parties both in pre-  
24 hearing issues, such as which procedural orders govern in the consolidated matter, and  
25 post-hearing issues, such as whether the administrative record of the rate case includes the  
26 entire record of the Financing Docket.

1           Accordingly, the CALJ should not formally consolidate the Financing Docket with  
2 the Rate Case Docket. If the CALJ believes that the issues involved in the preliminary  
3 inquiry should be considered in the rate case, she should simply issue a procedural order  
4 to that effect in both dockets, and the preliminary inquiry ordered in Decision No. 65796  
5 would move forward in the rate case. The only material filing relating to the preliminary  
6 inquiry that has been made in the Financing Docket is the submission by APS of its June  
7 13, 2003 “Report to the Arizona Corporation Commission” (“June Report”).<sup>1</sup>

8           **B.     The Evidence In the Financing Docket Did Not Demonstrate That APS**  
9           **or Any Affiliate Acted Inappropriately.**

10           There is a potential that someone could misconstrue the excerpts of Decision No.  
11 65796 that are quoted in Staff’s Motion to Consolidate. As discussed in APS’ June  
12 Report, APS and its affiliates complied with all applicable Electric Competition Rules,  
13 Decision No. 61973, the Code of Conduct and other applicable law. It was not a violation  
14 of law for APS and its affiliates to take prudent actions and request relief to protect  
15 customers and shareholders from the turmoil, bankruptcies, and rate increases that  
16 occurred in California and other western states. These actions, during a period of  
17 unprecedented volatility in wholesale power markets, allowed APS to continue to provide  
18 its customers with rate reductions and reliable electric service. Decision No. 65796 did not  
19 make any findings that APS or its affiliates acted inappropriately or contrary to the law  
20 but instead only directed Staff to further evaluate the unproven allegations in the  
21 preliminary inquiry.

22           More specifically, the quoted assertion from Decision No. 65796 (in a footnote)  
23 that Pinnacle West Energy Corporation (“PWEC”) may have misrepresented that it

24 <sup>1</sup>           At the time the June Report was submitted in the Financing Docket, APS expressed the belief that  
25 the preliminary inquiry at a minimum should be given a new docket number, as it was a proceeding  
26 independent from the financing. Staff directed the Company to make the filing in the financing docket  
because of Staff’s belief that it was somehow expected in that proceeding. However, it was always the  
Company’s assumption that the preliminary inquiry would proceed in either its own docket or through  
some other more appropriate procedural vehicle.

1 already had an approved contract with APS is simply not correct, as explained in detail in  
2 the June Report. This was nothing more than a modeling assumption and was clearly  
3 represented to the ratings agencies as such.

4 The excerpt cited in Staff's Motion also implies that had such a contract existed, it  
5 would have somehow been in conflict with the 1999 Settlement and Rule R14-2-1606(B)  
6 ("Rule 1606"). (See Motion at 2, lines 2-4.) Putting aside that the 1999 Settlement merely  
7 required APS to follow the Commission's rules with regard to post-2002 resource  
8 acquisition (including the rule which allowed APS to seek a waiver of Rule 1606) and did  
9 not create any stand alone requirement regarding such resource acquisition, there were no  
10 provisions in either the 1999 Settlement or the Commission's rules restricting APS from  
11 acquiring resources prior to 2003 in any manner it found prudent to do so, including a  
12 contract with an affiliate. And, the provision of Rule 1606 with which this hypothetical  
13 contract was in supposed conflict never itself became effective, having been indefinitely  
14 stayed by Decision No. 65154 (September 10, 2002).

15 **C. Conclusion.**

16 For the reasons stated above, APS respectfully requests that the CALJ not order the  
17 formal consolidation of the Financing Docket with the Rate Case Docket. APS does not  
18 oppose, however, an order that would direct the preliminary inquiry directed by Decision  
19 No. 65796 to proceed in the Rate Case Docket, rather than the Financing Docket. Such an  
20 order would be fully consistent with the generic Commission directive in Decision No.  
21 65796, which did not require the preliminary inquiry to be held in the already concluded  
22 Financing Docket. Such a result would avoid confusion to APS' customers, parties, and  
23 Wall Street and still allow for the potential efficiencies asserted in Staff's Motion to  
24 Consolidate.

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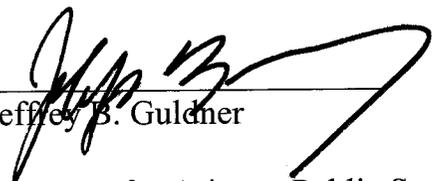
RESPECTFULLY SUBMITTED this 10th day of November 2003.

PINNACLE WEST CAPITAL CORP.  
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ORIGINAL AND 13 COPIES OF THE FOREGOING  
filed this 10th day of November 2003, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
PHOENIX, AZ 85007

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Parties of Record,  
Docket No. E-01345A-03-0437

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