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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES	Docket No. E-00000A-02-0051
IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	Docket No. E-00000A-01-0630

NOTICE OF FILING DIRECT TESTIMONY

Staff hereby provides notice of filing of the Direct Testimony of Barbara Keene in this docket.

RESPECTFULLY SUBMITTED this 30th day of September, 2005.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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DIRECT

TESTIMONY

OF

BARBARA KEENE

PUBLIC UTILITIES ANALYST MANAGER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

SEPTEMBER 30, 2005

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EXECUTIVE SUMMARY
GENERIC PROCEEDING CONCERNING ELECTRIC RESTRUCTURING ISSUES
AND
GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR
DOCKET NOS. E-00000A-02-0051 AND E-00000A-01-0630

Staff recommends that APS' revised Code of Conduct be adopted, except for modifications in the following areas: the designation of Pinnacle West Capital Corporation as a Competitive Electric Affiliate, Shared Services, Confidential Customer Information, Transfer of Goods and Services, Reporting Requirements, and Competitive Procurement. Staff recommends that Pinnacle West be designated as a Competitive Electric Affiliate, that a definition for Operating Employees be added to the Code of Conduct, that Operating Employees be excluded from providing Shared Services, that each employee that provides shared services be required to sign an affidavit stating that he or she will not act as a conduit for improperly sharing information, that the Code of Conduct be modified to state that the same lawyer cannot represent both sides in an arm's length transaction, and that Confidential Customer Information not be provided to others without the customer's prior written authorization.

INTRODUCTION

Q. Please state your name and business address.

A. My name is Barbara Keene. My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. By whom are you employed and in what capacity?

A. I am employed by the Utilities Division of the Arizona Corporation Commission as a Public Utilities Analyst Manager. My duties include supervising the energy portion of the Telecommunications and Energy Section, a copy of my résumé is provided in the Appendix.

Q. As part of your employment responsibilities, were you assigned to review matters contained in Docket Nos. E-00000A-02-0051 and E-00000A-01-0630?

A. Yes.

Q. What is the subject matter of your direct testimony?

A. My direct testimony is concerned with the Code of Conduct for Arizona Public Service Company ("APS").

Q. Have you previously prepared another document for this proceeding concerning Code of Conduct?

A. Yes. On August 13, 2003, I filed a Staff Report in these dockets that evaluated the Code of Conduct filed by APS in November 2002 and incorporated the Standards of Conduct resulting from the Track B process into the APS Code of Conduct. The Staff Report included a red-lined version of the Code of Conduct with Staff's modifications.

Q. What is the purpose of your direct testimony?

A. The purpose of my direct testimony is to provide Staff's response to the direct testimony filed by Jeffrey B. Guldner of APS on July 29, 2005. Mr. Guldner included in his testimony a revised Code of Conduct.

Q. What is Staff's recommendation regarding APS' revised Code of Conduct?

A. Staff recommends that APS' revised Code of Conduct be adopted, except for modifications in the following areas: the Definitions, Shared Services, Confidential Customer Information Transfer of Goods and Services, Reporting Requirements, and Competitive Procurement.

Q. What kind of analysis did you perform in this matter?

A. I reviewed the current Code of Conduct, the 2002 APS-modified Code of Conduct, the 2003 Staff Report, Mr. Guldner's direct testimony and revised Code of Conduct, and documents from the Federal Energy Regulatory Commission ("ERC")garding the final adoption of its Standards of Conduct (Order No. 2004).

Q. With the modifications that you have proposed, does Staff believe that APS' proposed Code of Conduct is reasonable and appropriate?

A. Yes. The APS-proposed Code of Conduct, with Staff's modifications, provides safeguards necessary to protect the public interest. The proposed Code of Conduct would help to promote a level playing field in both the retail and wholesale competitive markets by maintaining a separation between the utility and its competitive affiliates and by preventing cross-subsidization between the utility and its competitive affiliates. The current Code of Conduct addresses retail electric affiliates, but not affiliates in the wholesale market.

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The APS-proposed Code of Conduct improves upon the Code of Conduct previously recommended by Staff in its 2003 Staff Report by being reorganized and simplified. All of the items required by the Track A and Track B orders are still included, but nonessential portions were eliminated. The new version should be easier for utility and affiliate employees to learn and follow, while providing necessary protections.

DEFINITIONS

Q. Does Staff have any recommendations regarding the definitions contained in APS' proposed Code of Conduct?

A. Yes, Staff has recommendations regarding the following definitions: Competitive Electric Affiliate, Competitive Retail Services, and Noncompetitive Services.

<u>Designation of Pinnacle West Capital Corporation ("Pinnacle West")as Competitive Electric Affiliate</u>

Q. How does the definition of "Competitive Electric Affiliate" apply to Pinnacle West?

A. The revised Code of Conduct defines Competitive Electric Affiliate as "those affiliates of APS engaged in either Competitive Retail Services or Competitive Wholesale Services." The term "Competitive Wholesale Services" is defined as "the provision of energy products or services to the wholesale electric market." Pinnacle West provides energy to wholesale customers through contracts, such as its wholesale power contract with UNS Electric. Pinnacle West clearly falls within the definition of a "Competitive Electric Affiliate."

Q. What is Staff's concern with APS' interpretation of the definition of "Competitive Electric Affiliate" in regard to Pinnacle West?

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A. According to Mr. Guldner, although Pinnacle West has several wholesale contracts not used in providing service to APS customers, Pinnacle West would not be considered to be a Competitive Electric Affiliate because it does not actively market those contracts.

Staff disagrees with this reasoning. Pinnacle West provides energy to wholesale customers through contracts, such as its wholesale power contract with UNS Electric. Pinnacle West has the authority to enter into new contracts or renegotiate existing contracts. The purpose of the contracts is to sell energy. It does not matter whether or not Pinnacle West is trying to sell the contracts to others. Pinnacle West provides Competitive Wholesale Services and should, therefore, be designated as a Competitive Electric Affiliate. Staff believes that Pinnacle West currently falls within APS' proposed definition of "Competitive Electric Affiliate"; however, since APS apparently disagrees with this conclusion, the Commission should specifically designate Pinnacle West as a "Competitive Electric Affiliate" in order to clarify this issue.

Q. Are there issues created by including Pinnacle West as a "Competitive Electric Affiliate"?

A. Staff has discussed this matter with APS, and Staff believes that APS will contend that including Pinnacle West as a "Competitive Electric Affiliate" will create difficulties. Specifically, APS may claim that, under its proposed Code of Conduct as currently drafted, it will be unable to pay dividends to Pinnacle West if Pinnacle West falls within the definition of "Competitive Electric Affiliate." Staff is not convinced that this conclusion is correct or that, even if it is, the proposed Code of Conduct cannot be modified to appropriately address this matter. Staff anticipates that APS will respond to this issue in its testimony, and Staff is willing to evaluate that response and to reconsider its position, if appropriate.

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Definitions of "Competitive Retail Services" and "Noncompetitive Services"

Q. What are Staff's concerns regarding these definitions?

A. Both of these definitions refer to determinations made in Commission rules. To illustrate, APS' proposed Code of Conduct defines "Noncompetitive Services" as "unbundled distribution service, Standard Offer Service, and other services that have been determined to be noncompetitive services in a Commission Rule." Staff believes that defining these concepts by referring to some future "Commission Rule" is not helpful. It is possible that the Commission may make a determination about APS' noncompetitive services in a proceeding other than a rulemaking, such as a rate case or a complaint. Pursuant to the terms of APS' proposed definitions, only determinations made in a Commission rulemaking proceeding would be considered. Staff believes that this result may not give appropriate consideration to all relevant Commission determinations and therefore recommends deleting the phrase "in a Commission Rule" and replacing it with the phrase "by the Commission."

Q. Does Staff have other comments regarding these definitions?

A. Yes. Staff notes that APS Witness Guldner has testified that APS has "attempted to broaden" some of the terms in the proposed Code of Conduct "to allow a future Commission rulemaking proceeding to revise the Electric Competition Rules without requiring significant changes to the Proposed Code of Conduct." Staff does not want to leave APS, the Commission, or the public with the impression that the Code of Conduct is a static document that will not eventually require re-evaluation and review as time passes and circumstances change. The history of APS' existing Code of Conduct illustrates this phenomenon. APS' existing Code of Conduct, which was adopted in 2000 pursuant to the provisions of A.A.C. R14-2-1616, focused upon APS' conduct toward its competitive retail electric affiliate. Only two years later, Staff testified in the Track A proceeding that

APS' Code of Conduct should be expanded to address APS' conduct toward its competitive wholesale electric affiliate.

APS' stated desire to have a Code of Conduct that will not require review and revision may prove to be unreasonable as time passes and circumstances change. Staff cannot at this time predict when such future changes may be necessary, but Staff is unwilling to leave the impression that APS' effort to "broaden terms" is a reasonable substitute for subsequent review.

SHARED SERVICES

Q. What are Shared Services?

A. Shared Services are support services provided to various Pinnacle West affiliates by Pinnacle West itself or by any of its affiliates. For example, shared support staff may provide legal, accounting, or data processing services to various affiliates, but support staff do not participate in operating activities and generally would not be in a position to give an affiliate undue preferences.

Q. Is Staff concerned about any of the types of support services that APS included in its definition of Shared Services?

A. Yes. Staff is concerned about "risk and insurance management," "energy risk management," and "law."

<u>Risk Management</u>

Q. What is Staff's concern about "risk and insurance management" and "energy risk management"?

A. According to APS, "risk and insurance management" is the Shared Service that handles corporate policies and claims, and "energy risk management" is a specialized risk-

management function that ensures that overall portfolio structure and exposure to energy counterparties is appropriate on an enterprise basis. There are two issues that relate to both of these areas of risk management: (1) whether they should be shared functions, and (2) if so, how to handle the energy, customer, and market information received by risk management employees.

Q. Has Staff been concerned about risk management being a Shared Service?

A. Yes. In the 2003 Staff Report, Staff recommended that risk management and energy risk management not be considered as Shared Services. The Independent Monitor's report had identified these two Shared Services as a continuing source of potential conflict during the competitive procurement process resulting from Track B.

Q. Does Staff continue to hold this position?

A. No. After reviewing documents issued by FERC in its docket on Standards of Conduct, Staff concluded that it is not unreasonable for Pinnacle West and its subsidiaries to consider the risks that may result from the interplay between the business activities of various subsidiaries within the overall Pinnacle West structure. Because there may be a need for comprehensive oversight of risk management, it may be a Shared Service. However, Staff is concerned that (1) shared risk management employees not be operating employees of either APS or its Competitive Electric Affiliates and (2) that shared risk management employees not be a conduit for improperly sharing information.

Q. Why are these limitations on Shared Services necessary?

A. Limitations on shared services are necessary to prevent affiliates from receiving undue preferential treatment.

Q. Have other regulatory agencies addressed this issue?

A. Yes. FERC addressed this issue in its docket on Standards of Conduct. After reviewing the comments filed by 46 entities on this topic, FERC concluded that transmission providers should be allowed to realize the benefits of cost savings of sharing employees when those shared employees are not operating employees and do not improperly provide information between affiliates.

Q. What are "operating employees?"

A. FERC, in its Order No. 497-E regarding gas employees, has defined Operating Employees as, in part, those that are engaged in the day-to-day duties and responsibility for planning, directing, organizing, or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities.

FERC's Order No. 2004 defines "Transmission Function employee" as "an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations."

Staff recommends that a similar definition for Operating Employees, appropriate for electric employees, be added to the revised Code of Conduct, and that the definition for Shared Services indicate that Operating Employees are excluded from providing Shared Services.

Staff suggests the following definition for "Operating Employees": "employees, contractors, consultants, or agents who conduct electrical system operations or reliability functions, including, those who are engaged in day-to-day duties and responsibilities for

planning, directing, organizing, or carrying out energy-related operations. Operating Employees are excluded from providing Shared Services."

Q. What assurance could there be that shared risk management employees would not be a conduit for improperly sharing information?

A. Each employee who provides Shared Services should be trained regarding the Code of Conduct and should be required to sign an affidavit stating that he or she will not be a conduit for improperly sharing information. Part Two, Section IV.G. of the revised Code of Conduct should be modified to include a requirement for such signed affidavits.

Law

Q. Has Staff been concerned about law being a Shared Service?

A. Yes. In the 2003 Staff Report, Staff recommended that law not be considered as a Shared Service. The Independent Monitor's report had identified this Shared Service as a continuing source of potential conflict during the competitive procurement process resulting from Track B.

Q. Does Staff continue to hold this position?

A. No. After reviewing FERC's comments in its Standards of Conduct proceeding, Staff concluded that it is not unreasonable for law to be considered a Shared Service. FERC's rationale is that lawyers have a professional responsibility to maintain the confidentiality of information, and Staff finds the rationale to be reasonable.

Q. What is Staff's remaining concern about law being a Shared Service?

A. Staff is concerned that the same lawyer could represent both APS and one of its Competitive Electric Affiliates in an arm's length transaction involving both entities. Part Two, Section V.A. of the revised Code of Conduct should be modified to include a

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statement that the same lawyer cannot represent both sides in an arm's length transaction between APS and one of its Competitive Electric Affiliates.

CONFIDENTIAL CUSTOMER INFORMATION

Q. What is your concern about Confidential Customer Information?

A. Part Two, Section III.A. and B states that Confidential Customer Information would not be provided to others without the customer's prior authorization. Staff believes that the customer's authorization should be written because it provides a record that authorization was actually granted. A printed version of an electronic authorization would satisfy this requirement. Staff notes that the existing Code requires written authorization. Therefore, the proposed Code of Conduct should be modified to include the word "written" before "authorization."

Q. Are there any other concerns?

A. Although it appears to be a typo, Part Two, Section III.B. and C. contain the term "Customer Confidential Information." The term should be "Confidential Customer Information" to match the term in the definition section of the Code of Conduct.

TRANSFER OF GOODS AND SERVICES

Q. Does Staff have any comments regarding the section of APS' proposed Code of Conduct that addresses transfers of goods and services?

A. Yes. Paragraph A of that section states that all transactions between APS and its Competitive Electric Affiliates shall be arm's length transactions, "except as otherwise provided below." Staff believes that the subsequent paragraphs do not clearly describe the transactions that will not be at arm's length. For example, Paragraph D refers to "services provided by APS or its Competitive Electric Affiliate that are subject to a filed tariff." A purchased power contract between APS and an affiliate that provides competitive

wholesale services may be subject to a "tariff," such as a FERC determination allowing market-based rates, yet that contract may still be a transaction that requires substantial arm's length negotiations between the parties. Staff believes that this section could be improved by specifically listing the types of transactions that may not be at arm's length.

REPORTING REQUIREMENTS

Q. Does Staff have any comments regarding the reporting requirements contained in APS' proposed Code of Conduct?

A. Yes. Staff recommends that these reports be available to the public. Therefore, the words "and shall be publicly available" should be added to Part Two, Section VIII, after "40-204:".

COMPETITIVE PROCUREMENT

Q. Does Staff have any changes to Part Four of APS' proposed Code of Conduct, which deals with competitive procurement?

A. Yes, Staff has one change in this part of APS' proposed Code of Conduct. In Part Four, Section III.B, APS' proposal provides that "[i]f a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement request for proposals or auction process, an independent monitor will oversee the process." Staff suggests inserting the phrase "selected by Staff" after the reference to "an independent monitor." Staff believes that this change is necessary to ensure that the monitor will be truly objective.

SUMMARY OF STAFF RECOMMENDATIONS

Q. Please summarize Staff's recommendations.

A. 1. Staff recommends that APS' revised Code of Conduct be adopted, except for modifications in the following areas: Definitions, Shared Services, Confidential

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Customer Information, Transfer of Goods and Services, Reporting Requirements, and Competitive Procurement.

2. Staff recommends that Pinnacle West be designated as a Competitive Electric Affiliate. Staff also recommends that the Commission delete the phrase "in a Commission Rule" from the definitions of "Competitive Retail Services" and "Noncompetitive Retail Services" and replace it with the phrase "by the Commission."

3. Staff recommends that a definition for Operating Employees be added to the Code of Conduct.

4. Staff recommends that Operating Employees be excluded from providing Shared Services.

5. Staff recommends that each shared support employee should be required to sign an affidavit stating that he or she will not be a conduit for improperly sharing information.

6. Staff recommends that the Code of Conduct be modified to state that the same lawyer cannot represent both APS and a Competitive Electric Affiliate in an arm's length transaction.

7. Staff recommends that Confidential Customer Information not be provided to others without the customer's prior written authorization.

8. Staff recommends that the Transfer of Goods and Services section be improved by specifically listing the types of transactions that may not be at arm's length.

9. Staff recommends that reports be publicly available.

10. Staff recommends that the Competitive Procurement section be modified to state that an independent monitor would be selected by Staff.

Q. Does this conclude your direct testimony?

A. Yes, it does.

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RESUME

BARBARA KEENE

Education

B.S.	Political Science, Arizona State University (1976)
M.P.A.	Public Administration, Arizona State University (1982)
A.A.	Economics, Glendale Community College (1993)

Additional Training

Management Development Program - State of Arizona, 1986-1987
UPLAN Training - LCG Consulting, 1989, 1990, 1991
various seminars, workshops, and conferences on ratemaking, energy efficiency, rate design, computer skills, labor market information, training trainers, and Census products

Employment History

Arizona Corporation Commission, Utilities Division, Phoenix, Arizona: Public Utilities Analyst Manager (May 2005-present). Supervise the energy portion of the Telecommunications and Energy Section. Conduct economic and policy analyses of public utilities. Coordinate working groups of stakeholders on various issues. Prepare Staff recommendations and present testimony on electric resource planning, rate design, special contracts, energy efficiency programs, and other matters. Responsible for maintaining and operating UPLAN, a computer model of electricity supply and production costs.

Arizona Corporation Commission, Utilities Division, Phoenix, Arizona: Public Utilities Analyst V (October 2001-present), Senior Economist (July 1990-October 2001), Economist II (December 1989-July 1990), Economist I (August 1989-December 1989). Conduct economic and policy analyses of public utilities. Coordinate working groups of stakeholders on various issues. Prepare Staff recommendations and present testimony on electric resource planning, rate design, special contracts, energy efficiency programs, and other matters. Responsible for maintaining and operating UPLAN, a computer model of electricity supply and production costs.

Arizona Department of Economic Security, Research Administration, Economic Analysis Unit: Labor Market Information Supervisor (September 1985-August 1989), Research and

Statistical Analyst (September 1984-September 1985), Administrative Assistant (September 1983-September 1984). Supervised professional staff engaged in economic research and analysis. Responsible for occupational employment forecasts, wage surveys, economic development studies, and over 50 publications. Edited the monthly **Arizona Labor Market Information Newsletter**, which was distributed to about 4,000 companies and individuals.

Testimony

Resource Planning for Electric Utilities (Docket No. U-0000-90-088), Arizona Corporation Commission, 1990; testimony on production costs and system reliability.

Trico Electric Cooperative Rate Case (Docket No. U-1461-91-254), Arizona Corporation Commission, 1992; testimony on demand-side management and time-of-use and interruptible power rates.

Navopache Electric Cooperative Rate Case (Docket No. U-1787-91-280), Arizona Corporation Commission, 1992; testimony on demand-side management and economic development rates.

Arizona Electric Power Cooperative Rate Case (Docket No. U-1773-92-214), Arizona Corporation Commission, 1993; testimony on demand-side management, interruptible power, and rate design.

Tucson Electric Power Company Rate Case (Docket Nos. U-1933-93-006 and U-1933-93-066) Arizona Corporation Commission, 1993; testimony on demand-side management and a cogeneration agreement.

Resource Planning for Electric Utilities (Docket No. U-0000-93-052), Arizona Corporation Commission, 1993; testimony on production costs, system reliability, and demand-side management.

Duncan Valley Electric Cooperative Rate Case (Docket No. E-01703A-98-0431), Arizona Corporation Commission, 1999; testimony on demand-side management and renewable energy.

Tucson Electric Power Company vs. Cyprus Sierrita Corporation, Inc. (Docket No. E-0000I-99-0243), Arizona Corporation Commission, 1999; testimony on analysis of special contracts.

Arizona Public Service Company's Request for Variance (Docket No. E-01345A-01-0822), Arizona Corporation Commission, 2002; testimony on competitive bidding.

Generic Proceeding Concerning Electric Restructuring Issues (Docket No. E-00000A-02-0051), Arizona Corporation Commission, 2002; testimony on affiliate relationships and codes of conduct.

Tucson Electric Power Company's Application for Approval of New Partial Requirements Service Tariffs, Modification of Existing Partial Requirements Service Tariff 101, and Elimination of Qualifying Facility Tariffs (Docket No. E-01933A-02-0345) and Application for Approval of its Stranded Cost Recovery (Docket No. E-01933A-98-0471), Arizona Corporation Commission, 2002, testimony on proposals to eliminate, modify, or introduce tariffs and testimony on the modification of the Market Generation Credit.

Arizona Public Service Company's Application for Approval of Adjustment Mechanisms (Docket No. E-01345A-02-0403), Arizona Corporation Commission, 2003, testimony on the proposed Power Supply Adjustment and the proposed Competition Rules Compliance Charge.

Generic Proceeding Concerning Electric Restructuring Issues, et al (Docket No. E-00000A-02-0051, et al), Arizona Corporation Commission, 2003; Staff Report on Code of Conduct.

Arizona Public Service Company Rate Case (Docket No. E-01345A-03-0437), Arizona Corporation Commission, 2004; testimony on demand-side management, system benefits, renewable energy, the Returning Customer Direct Assignment Charge, and service schedules.

Arizona Electric Power Cooperative Rate Case (Docket No. E-01773A-04-0528), Arizona Corporation Commission, 2005; testimony on a fuel and purchased power cost adjustor, demand-side management, and rate design.

Trico Electric Cooperative Rate Case (Docket No. E-01461A-04-0607), Arizona Corporation Commission, 2005; testimony on the Environmental Portfolio Standard; demand-side management; special charges; and Rules, Regulations, and Line Extension Policies.

Publications

Author of the following articles published in the *Arizona Labor Market Information Newsletter*:

"1982 Mining Employees - Where are They Now?" - September 1984
"The Cost of Hiring" and "Arizona's Growing Industries" - January 1985
"Union Membership - Declining or Shifting?" - December 1985
"Growing Industries in Arizona" - April 1986
"Women's Work?" - July 1986
"1987 SIC Revision" - December 1986
"Growing and Declining Industries" - June 1987
"1986 DOT Supplement" and "Consumer Expenditure Survey" - July 1987
"The Consumer Price Index: Changing With the Times" - August 1987
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