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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

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 REBUTTAL TESTIMONY**

Arizona Public Service Company ("APS") hereby files the Rebuttal Testimony of  
Jeffrey B. Guldner.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of October 2005.

PINNACLE WEST CAPITAL  
CORPORATION LAW DEPARTMENT

By Karilee Ramaley  
Karilee Ramaley  
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Attorneys for Arizona Public Service Company

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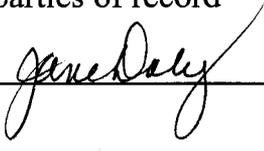
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Original and ~~13~~ <sup>13</sup> copies of the foregoing  
filed this 21<sup>st</sup> day of October 2005, with:

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

Copies of the foregoing mailed, faxed or  
transmitted electronically this 21<sup>st</sup>  
day of October 2005, to:

All parties of record

  
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**REBUTTAL TESTIMONY  
OF  
JEFFREY B. GULDNER**

**On Behalf of Arizona Public Service Company**

**Docket No. E-00000A-02-0051  
Docket No. E-00000A-01-0630**

October 21, 2005

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1                                   **REBUTTAL TESTIMONY OF JEFFREY B. GULDNER**  
2                                   **ON BEHALF OF ARIZONA PUBLIC SERVICE COMPANY**  
3                                   **(Docket No. E-00000A-02-0051)**  
4                                   **(Docket No. E-00000A-01-0630)**

4    I.    INTRODUCTION

5    **Q.    PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.**

6    A.    My name is Jeffrey B. Guldner. I am the Director of Regulatory Compliance for  
7           Arizona Public Service Company (“APS” or “Company”).

8    **Q.    DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?**

9    A.    Yes.

10   **Q.    WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11   A.    My rebuttal testimony responds to the testimony filed by Arizona Corporation  
12           Commission (“Commission”) Staff witness Ms. Barbara Keene. Staff has  
13           recommended that the Commission adopt APS’ Proposed Code of Conduct with  
14           some modifications. In my testimony, I discuss the revisions recommended by Ms.  
15           Keene that APS does not oppose incorporating into the Proposed Code of Conduct.  
16           These are the majority of Staff’s recommended revisions. For the remaining issues,  
17           I also address why the Company believes some modification is appropriate to  
18           ensure that the Proposed Code of Conduct can be implemented reasonably and  
19           effectively.  
20

21   II.   SUMMARY OF REBUTTAL TESTIMONY

22   **Q.    PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

23   A.    APS believes that the Company and Staff are in agreement regarding the general  
24           structure and provisions of a new Code of Conduct. APS does not oppose most of  
25           the changes recommended by Staff to the Proposed Code of Conduct, which was  
26

1 attached to my direct testimony as Schedule JBG-1. There is one change  
2 recommended by Staff that APS believes is acceptable with only minor  
3 clarification. In addition, it is Staff's position that Pinnacle West Capital  
4 Corporation ("PWCC"), the parent corporation of APS, falls within the definition  
5 of a "Competitive Electric Affiliate." Although APS believes that it would be  
6 appropriate to exclude PWCC from the definition of a Competitive Electric  
7 Affiliate, I am proposing certain modifications to the Proposed Code of Conduct  
8 should the Commission agree with Staff's position. Finally, I discuss clarifications  
9 to Staff's recommended definition of "Operating Employee" that would ensure that  
10 this term is not interpreted in a way that would adversely affect the provision of  
11 shared services, which are recognized as appropriate in the Proposed Code of  
12 Conduct. I have attached a revised, redlined version of the Proposed Code that  
13 incorporates these revisions as Schedule JBG-1R. No other party has submitted any  
14 testimony or recommended changes to the Proposed Code of Conduct.  
15

16 **III. DISCUSSION**

17 **Q. ARE THERE AREAS OF AGREEMENT BETWEEN APS AND STAFF  
18 RELATING TO THE PROPOSED CODE OF CONDUCT?**

19 **A.** Yes. APS does not oppose most of Staff's recommendations, which can be  
20 incorporated in the Proposed Code of Conduct without any further clarification or  
21 modification. These consist of:

- 22 • Including the phrase "by the Commission" instead of "in a  
23 Commission Rule" in the definitions of "Competitive Retail  
24 Services" and "Noncompetitive Retail Services."  
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- Allowing a single law department to represent both APS and a Competitive Electric Affiliate, while prohibiting a single attorney from representing both entities in an arm's length transaction.
- Including risk management as a shared service, with the limitations that a shared risk management employee cannot be an Operating Employee of either APS or its Competitive Electric Affiliates and cannot be a conduit for improperly sharing information.
- Requiring that Confidential Customer Information be provided to others only with the customer's prior *written* authorization, which could include a printed version of an electronic authorization.
- In those circumstances where a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement and an independent monitor is required, Staff will select the monitor.
- Reports that are required under the Proposed Code of Conduct will be made available to the public.

**Q. ARE THERE ANY STAFF RECOMMENDATIONS WITH WHICH THE COMPANY AGREES, SUBJECT TO MINOR CLARIFICATIONS?**

A. Yes, there is one. Staff has recommended that each shared support employee be required to sign an affidavit stating that he or she will not be a conduit for improperly sharing information. APS believes that electronic acknowledgements would meet the requirement of signed affidavits and, therefore, should be authorized by the Proposed Code of Conduct. This would allow the acknowledgement to take place as part of a computer-based training program.

1 Q. STAFF RECOMMENDS THAT PWCC BE CONSIDERED A  
2 "COMPETITIVE ELECTRIC AFFILIATE." WHAT IS THE COMPANY'S  
RESPONSE TO THIS RECOMMENDATION?

3 A. In my direct testimony, I acknowledged that PWCC has some wholesale contracts  
4 but noted that those contracts are not marketed to APS for native load  
5 requirements. It was the potential marketing to APS of the output of an affiliate-  
6 owned power plant that was the original focus for expanding APS' Code of  
7 Conduct. For example, the discussion on the Code of Conduct issue in the Track A  
8 order noted that the Commission's interest was in "affiliate wholesale purchases  
9 used to serve retail customers." Decision No. 65154 (September 10, 2002) at 25. I  
10 recommended that the Proposed Code of Conduct not consider PWCC to be a  
11 Competitive Electric Affiliate because PWCC is not marketing power to APS  
12 customers and the relationship between APS and its parent company is very  
13 different from the relationship between APS and a "sister" affiliate, such as APS  
14 Energy Services.

15 Specifically, as the parent corporation, PWCC has the responsibility to provide  
16 corporate governance to its affiliates. This requires a detailed understanding of  
17 information from all affiliates. For example, nonpublic information about APS'  
18 load growth forecasts is critical for effective governance by PWCC because that  
19 information affects corporate requirements and processes, such as earnings  
20 forecasts and capital expenditures.

21  
22 In addition, officers and directors of a publicly traded parent company such as  
23 PWCC must have broad access to information to satisfy both their fiduciary  
24 obligations and statutory requirements such as the Sarbanes-Oxley Act. An officer  
25  
26

1 of only APS has no such obligation with respect to the conduct of a "sister"  
2 company, such as APS Energy Services.

3  
4 Finally, as noted by Staff, APS had concerns about how the transfer pricing  
5 requirements of the Code of Conduct would apply to certain transactions between  
6 APS and PWCC. One potential example is the payment of dividends by APS to  
7 PWCC, which obviously cannot be "priced" at the higher of cost or market like a  
8 transfer of a good or service under the Proposed Code of Conduct. I agree with  
9 Staff, however, that the Code of Conduct should not affect the payment of  
10 dividends by APS.

11 **Q. IF PWCC WERE CONSIDERED A "COMPETITIVE ELECTRIC**  
12 **AFFILIATE" AS RECOMMENDED BY STAFF, WOULD ANY CHANGES**  
13 **TO THE PROPOSED CODE OF CONDUCT BE NECESSARY?**

14 A. Yes, although it is difficult to anticipate every potential transaction or issue that  
15 could arise. If the Commission considers PWCC to be a "Competitive Electric  
16 Affiliate" under the Proposed Code of Conduct, the following changes, or at least  
17 some clarification, are necessary.<sup>1</sup>

18 First, it should be clear that the Proposed Code of Conduct does not apply to the  
19 payment of dividends by APS to PWCC or to "pass-through" transactions, such as  
20 tax payments, that normally occur between a parent corporation and a subsidiary.

21 Second, it would be helpful to clarify the scope of shared services, as the Proposed  
22 Code of Conduct was not drafted to reflect PWCC as a Competitive Electric  
23

24  
25 <sup>1</sup> The Policies and Procedures that will be developed after this Code of Conduct is approved would also  
26 require some changes from the existing Policies and Procedures.

1 Affiliate. Like the original Code of Conduct, the Proposed Code of Conduct  
2 identified shared services that may be provided throughout the corporate enterprise,  
3 subject to appropriate affiliate accounting. If PWCC is considered a Competitive  
4 Electric Affiliate, essentially all of the services that PWCC employees provide  
5 should be considered "shared services" under the Proposed Code of Conduct.  
6 These include such things as enterprise finance, shareholder services, law and  
7 business practices, and corporate audit services. This is particularly important as  
8 the Proposed Code of Conduct expressly permits the sharing of information  
9 required to either give or receive shared services.

10  
11 In addition, I recommend that the term "corporate governance" be included in the  
12 definition of shared services to clarify that PWCC employees, officers and  
13 directors can provide such governance and that APS may provide information to  
14 PWCC employees for corporate governance purposes.

15 Finally, if PWCC is considered a Competitive Electric Affiliate, the Code of  
16 Conduct should be clear that physical separation is not required for shared services  
17 functions provided by PWCC.

18  
19 **Q. DO YOU SUPPORT STAFF'S RECOMMENDATION THAT THE CODE OF**  
20 **CONDUCT EXCLUDE "OPERATING EMPLOYEES" FROM PROVIDING**  
21 **SHARED SERVICES?**

22 **A.** With some clarification as to what constitutes an "operating employee," APS would  
23 not oppose Staff's recommendation. Staff correctly notes that the Federal Energy  
24 Regulatory Commission's ("FERC") Standards of Conduct rules define a  
25 "Transmission Function Employee" as an employee with day-to-day duties of  
26 carrying out transmission-related operations. In subsequent Standards of Conduct

1 orders, FERC has clarified and discussed how that term applies to employees, such  
2 as lawyers and regulatory personnel, who might be considered to "carry out"  
3 transmission related operations. In general, FERC recognizes that lawyers and  
4 regulatory personnel will advise and make recommendations on transmission-  
5 related operations. Provided these personnel are not the operational decision-  
6 makers on issues, however, FERC has acknowledged that they can appropriately be  
7 shared employees. A similar understanding should apply to any definition of  
8 "Operating Employees" to ensure that the use of this term does not eliminate some  
9 of the defined shared services in the Proposed Code of Conduct.

10  
11 **Q. WHAT CLARIFICATIONS DOES THE COMPANY BELIEVE ARE  
12 NECESSARY TO THE DEFINITION OF "OPERATING EMPLOYEES"?**

13 A. Two clarifications would better define the scope of the term "Operating  
14 Employees." First, the Proposed Code of Conduct is different in scope and intent  
15 from the FERC authorities that Ms. Keene cites in her testimony. Some shared  
16 services identified in this Proposed Code of Conduct could be construed to involve  
17 employees who would have day-to-day responsibility for "planning, directing,  
18 organizing or carrying out energy related operations" but who are appropriate  
19 shared service employees. For example, information and communications  
20 technology personnel are "support" personnel, but nonetheless have responsibilities  
21 for information and communications systems related to "energy operations." Such  
22 employees should be allowed to provide shared support services provided they do  
23 not act as a conduit of information between Competitive Electric Affiliates. The  
24 same analysis applies to other support services such as environmental, health and  
25 safety, and regulatory services.

1 Second, the definition of "Operating Employee" should permit the continuation of  
2 the marketing and trading structure that currently exists at APS, which provides  
3 marketing and trading services to PWCC and other affiliates. The marketing and  
4 trading organization was moved back to APS following the Track A Decision. Due  
5 to the limited amount of marketing and trading that now occurs outside of APS, it  
6 is not practical to maintain separate trading departments with the associated  
7 software and hardware systems and support functions. Nonetheless, the services  
8 provided to the non-regulated entities are handled by a separate trading desk, which  
9 does not enter into transactions for APS. To accommodate this structure, the  
10 definition of "Operating Employee" should be revised to state that an Operating  
11 Employee is an employee engaged in "day-to-day duties and responsibilities for  
12 planning, directing, organizing, or carrying out energy-related operations for APS."  
13 Such a clarification would allow a separate trading desk that would not have  
14 responsibility for APS marketing and trading, but could continue to administer any  
15 non-APS contracts and positions. The other non-trading functions would be  
16 considered shared services.

17  
18 **Q. ARE YOU RECOMMENDING A REVISED DEFINITION FOR**  
19 **"OPERATING EMPLOYEES"?**

20 A. Yes. I believe that the following definition embodies the discussion above while  
21 still capturing the intent of Staff.

22 Add the following in Part One, Definitions –

23 **"Operating Employees"** means employees, contractors,  
24 consultants, or agents who have day-to-day duties and  
25 responsibilities for planning, directing, organizing, or carrying out  
26 energy-related operations for APS. Operating employees include,  
but are not limited to, generation employees, transmission  
employees and distribution employees of APS. Operating

1 employees do not include employees performing support services in  
2 the areas specifically identified in the definition of "Shared  
3 Services."

4 In Part Two, Section IV (G) add the phrase - "Operating Employees cannot provide  
5 Shared Services."

6 **Q. STAFF ALSO RECOMMENDED THAT APS SPECIFICALLY IDENTIFY  
7 THOSE TRANSACTIONS BETWEEN APS AND A COMPETITIVE  
8 ELECTRIC AFFILIATE THAT MIGHT NOT BE ARM'S LENGTH  
9 TRANSACTIONS. WHAT IS YOUR RESPONSE TO THAT  
10 RECOMMENDATION?**

11 **A.** The transfer pricing requirements between APS and its Competitive Electric  
12 Affiliates give rise to many situations where a transaction cannot be made at "arm's  
13 length." For example, a transfer between APS and APS Energy Services that is  
14 priced at the higher of cost or market would not be "arm's length" if cost exceeded  
15 the market price. In addition, a tariffed transaction, such as Standard Offer Service  
16 provided to a building used by a Competitive Electric Affiliate or transmission  
17 service taken under APS' Open Access Transmission Tariff, is priced at the tariffed  
18 rate rather than negotiated at arm's length. Finally, there are transfers between APS  
19 and PWCC that relate to corporate and pass-through obligations, such as the annual  
20 payments of APS' share of the enterprise's withholding and payroll taxes,  
21 employee benefits and pension costs, estimated income taxes, employee savings  
22 plan contributions, and APS' allocation of corporate governance costs.

23 Staff requested that APS list transactions that would not be arm's length. As  
24 requested by Staff, it is possible to identify generally the following types of  
25 transactions where the "arm's length" requirement would not apply:  
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- Transactions where the price is either the higher of or lower of fully allocated cost or fair market value.
- Transactions under a tariff where a price or rate is specified. In the case of Market Based Rate Tariffs where a price is not specified, the price shall be established through an arm's length transaction.
- Corporate transactions such as dividends or payments of an entity's share of taxes, benefits, or other pass-through costs.
- Shared services when accounted for in accordance with the Policies and Procedures. The Policies and Procedures provide for either direct charges of costs that can be assigned to a specific affiliate (such as legal costs) or allocations for costs that cannot be tied to a specific affiliate (such as the costs of preparing consolidated financial statements).

IV. CONCLUSION

**Q. DO YOU HAVE ANY CONCLUDING REMARKS?**

A. APS does not oppose the majority of the changes recommended by Staff to the Proposed Code of Conduct and has incorporated them into the Revised Proposed Code of Conduct attached to my testimony at Schedule JBG-1R. For the one provision where the Company has proposed a modification to Staff's recommended language, APS believes that the modification is necessary to allow the Company to operate efficiently as well as to comply with other applicable laws and regulations, such as Sarbanes Oxley.

1 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

2 A. Yes.

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Schedule JBG-1R

CODE OF CONDUCT  
FOR THE  
ARIZONA CORPORATION COMMISSION

October 21, 2005

# CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

## Part One - - Definitions

“APS” means Arizona Public Service Company.

“Arms Length Transaction” means a transaction between or among parties, each of whom acts in its own interest and where the final decision on the transaction is not made by a single individual or group of individuals with direct management control or other authority over both parties.

“Commission” means the Arizona Corporation Commission.

“Commission Rule” means a final rule of the Commission effective at the time in question.

“Competitive Electric Affiliate” means those affiliates of APS engaged in either Competitive Retail Services or Competitive Wholesale Services.

“Competitive Procurement” means a process by which power is procured by APS.

“Competitive Retail Affiliate” means any affiliate of APS that is engaged in Competitive Retail Services within this state and is an Electric Service Provider.

“Competitive Retail Services” means unbundled generation, unbundled metering, unbundled meter reading, and other retail electric services that have been determined to be competitive services by the Commission.

Deleted: in a Commission Rule

“Competitive Wholesale Services” means the provision of energy products or services to the wholesale electric market.

“Confidential Customer Information” means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services. Confidential Customer Information also includes non-public customer-specific information obtained by APS from customers of special districts and public power entities on behalf of such special districts and public power entities.

“Confidential Information” means Confidential Customer Information and any other nonpublic information regarding Competitive Retail Services or Competitive Wholesale Services obtained solely through the provision of Noncompetitive Services or in a Competitive Procurement process. Confidential Information shall not include information that is otherwise available to non-affiliated third parties or information necessary for a Competitive Electric Affiliate to provide or receive Shared Services.

“Distribution Information” means information about available distribution capacity, transmission access, and curtailments.

“Electric Service Provider” means an entity authorized by a Certificate of Convenience and Necessity to provide Competitive Retail Services in Arizona.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

**"Extraordinary Circumstance"** means any situation that requires APS to act in a manner contrary to this Code of Conduct to ensure the reliability of APS' system, or ensure the safety of employees or the public, or to respond to any other emergency where such action is required.

**"FERC"** means the Federal Energy Regulatory Commission.

**"Noncompetitive Services"** means unbundled distribution service, Standard Offer Service and other services that have been determined to be noncompetitive services by the Commission.

Deleted: in a Commission Rule.

**"Operating Employees"** means employees, contractors, consultants, or agents who have day-to-day duties and responsibilities for planning, directing, organizing, or carrying out energy-related operations for APS. Operating employees include, but are not limited to, generation employees, transmission employees and distribution employees of APS. Operating employees do not include employees performing support services in the areas specifically identified in the definition of Shared Services.

**"Pinnacle West"** means Pinnacle West Capital Corporation.

**"Policies and Procedures"** means those policies and procedures developed by APS to implement this Code of Conduct.

**"Shared Services"** means those support services provided by Pinnacle West or any of its affiliates, including but not limited to; human resources; accounting; corporate governance; tax; insurance; risk and insurance management, claims services, and public safety; energy risk management; audit services; contract management; information and communication technology; communications; environmental, health and safety; regulatory services; system dispatch; transportation; security; facilities; shareholder services; law and business practices; public affairs; and enterprise finance.

**"Standard Offer Service"** means the bundled provision of retail electric service.

**"Third Party"** means any Electric Service Provider or market participant other than a Competitive Retail Affiliate that may lawfully provide Competitive Retail Services in Arizona.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

**Part Two - - Basic Principles**

**I. Applicability of Code of Conduct**

- A. The Code of Conduct applies to APS as a provider of Noncompetitive Services and its interactions with its Competitive Electric Affiliates, unless an Extraordinary Circumstance excuses compliance.
- B. Regardless of any provision in this Code of Conduct, in an Extraordinary Circumstance APS may take whatever steps are necessary to ensure the reliability of APS' system, to protect the public interest, or to ensure safety for employees and the public. APS shall notify the Commission within 24 hours of or the next business day after an Extraordinary Circumstance and shall post on a public website a description of the Extraordinary Circumstance and the actions taken by APS.

**II. No Discrimination in Service**

APS shall not give preferential treatment to its Competitive Electric Affiliates and shall treat affiliated and non-affiliated entities in a nondiscriminatory manner in providing service.

**III. Confidential Information**

- A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or a Third Party without the customer's prior written authorization, which would include a printed version of an electronic authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall not provide Confidential Information to a Competitive Electric Affiliate unless such information is also made available to Third Parties under similar terms and conditions. This restriction shall not apply to Customer Confidential Information provided with the customer's prior authorization.
- C. If Customer Confidential Information is properly requested by a Third Party, APS shall not unreasonably delay or withhold the release of the requested Customer Confidential Information.

**IV. Separation Requirements**

- A. APS shall be a separate corporate entity from its Competitive Electric Affiliates.
- B. Unless otherwise permitted by the Code of Conduct, APS shall operate separately from its Competitive Electric Affiliates to the extent practical.
- C. APS shall keep separate books and records and shall keep accounting records that set forth appropriate cost allocations between APS and its Competitive Electric

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Affiliates, which shall be made available to the Commission in accordance with A.A.C. R14-3-804(A).

- D. APS and its Competitive Electric Affiliates may share equipment and facilities only in accordance with the functional separation requirements set forth in this Code of Conduct and the Policies and Procedures.
- E. APS and its Competitive Electric Affiliates shall not jointly employ the same employees, except that APS and its Competitive Electric Affiliates may utilize common officers and directors for corporate support, oversight, and governance. APS officers directly responsible for operational matters shall not serve as officers or directors of a Competitive Electric Affiliate. Common officers and directors shall not be utilized to circumvent the prohibition on providing Confidential Information to a Competitive Electric Affiliate, nor shall such common officers or directors be permitted to participate during the development or conduct of any Competitive Procurement process, or in any subsequent negotiations in which a Competitive Electric Affiliate employing the common officer or director participates as a bidder.
- F. Contracts for services accounted for in conformance with Part 2, Section V of this Code of Conduct shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS, and any Competitive Electric Affiliate.
- G. APS and its Competitive Electric Affiliates may utilize Shared Services in accordance with Part 2, Section V of this Code of Conduct, but Shared Services shall not act as conduit for Confidential Information to Competitive Electric Affiliates. Each shared service employee shall be required to acknowledge, either in writing or electronically, that he or she will not be a conduit for improperly sharing Confidential Information. Operating Employees cannot provide Shared Services nor shall a shared attorney represent both APS and a Competitive Electric Affiliate in a transaction.

V. Transfers of Goods and Services

- A. APS shall not subsidize its Competitive Electric Affiliates through any rates or charges for Noncompetitive Services and, except as otherwise provided below, all transactions between APS and its Competitive Electric Affiliates shall be Arm's Length Transactions.
- B. Shared Services may be provided by APS to its Competitive Electric Affiliates, and such services shall be accounted for in accordance with the Policies and Procedures.
- C. APS may acquire Shared Services from Pinnacle West and such services shall be accounted for in accordance with the Policies and Procedures.

**Deleted:** An arms length transaction is a transaction between or among parties, each of whom acts in its own interest and where the final decision on the transaction is not made by a single individual or group of individuals with direct management control or other authority over both parties.

## CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

- D. Any services provided by APS or its Competitive Electric Affiliates that are subject to a filed tariff shall be provided at the rates and under the terms and conditions set forth in the tariff, unless an exception is permitted by the governing body with jurisdiction over such tariff. APS shall not be required to charge its Competitive Electric Affiliates more than its authorized tariff rate for any Noncompetitive Service.
- E. If APS sells to its Competitive Electric Affiliates non-tariffed goods or services, the transfer price shall be the higher of cost or market.
- F. If APS' Competitive Electric Affiliates sell to APS non-tariffed goods or services, the transfer price shall be at a price not to exceed market.

### **VI. Compliance, Dissemination and Education**

- A. Compliance with the Code of Conduct is mandatory.
- B. The failure or refusal of an employee of APS or its affiliates to abide by or to act according to the Code of Conduct or the Policies and Procedures may subject the employee to disciplinary action, up to and including discharge from employment.
- C. Copies of this Code of Conduct shall be provided to employees and agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct.
- D. A copy of the Code of Conduct shall be made available to all employees of APS and its Competitive Electric Affiliates on the corporate Intranet site.
- E. Training on the provisions of the Code of Conduct and its implementation shall be provided to the employees of APS and its Competitive Electric Affiliates and those authorized agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct.
- F. Any activity that would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.
- G. APS shall provide a means for employees to raise questions and report concerns regarding this Code of Conduct.

### **VII. Modifications to the Code of Conduct or Policies and Procedures**

- A. APS may request modifications to the Code of Conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.
- B. APS may not make and implement any material change to the Policies and Procedures, including modifications to allocation methods or the direct and indirect allocators used in the Policies and Procedures, without filing an update

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with the Commission or its designee. Once notification is made by APS of an intended modification, if no action is taken by the Commission or its designee within 30 days of its filing, the modification shall be deemed approved.

**VIII. Reporting Requirements**

APS shall submit the following information to the Commission on an annual basis each April 15th, which shall be available to the public:

Deleted: treated in accordance with  
A.R.S. § 40-204

- A. A list of all Extraordinary Circumstances that explains the nature, cause and duration of each incident.
- B. A report summarizing the charges associated with all non-tariffed transactions between APS and its Competitive Electric Affiliates, with the associated charges reported separately for each Competitive Electric Affiliate and for each category of service.
- C. A report detailing (i) how many non-Standard Offer Service customers were provided metering services or meter reading services and (ii) how many Electric Service Providers received consolidated billing services from APS.
- D. A report identifying all transfers between APS and its Competitive Electric Affiliates of employees at the manager level or above.

**IX. Dispute Resolution**

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in A.A.C. R14-2-212.

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**Part Three - - Retail Electric Competition**

**I. Non-Discrimination**

- A. If a retail tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Retail Affiliates and Third Parties and their respective customers.
- B. APS shall process requests for service by Competitive Retail Affiliates and Third Parties and their respective customers in the same manner and within the same time period.
- C. APS shall offer access to Distribution Information to its Competitive Retail Affiliates and Third Parties concurrently and under the same material terms and conditions.

**II. Consolidated Billing and Promotions within the Bill Envelope**

- A. If APS includes charges for Competitive Retail Services in its bills for Noncompetitive Services, APS shall offer the same service to any Third Party on the same material terms and conditions.
- B. This provision shall not prevent a Competitive Retail Affiliate or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement if authorized by the customer.
- C. If APS includes with its bills for Noncompetitive Services advertising or promotional materials from its Competitive Retail Affiliate, APS shall offer the same service to any Third Party on the same material terms and conditions.

**III. Company Contact Information**

Telephone numbers and websites used by APS for the provision of Noncompetitive Services shall be different from those used by its Competitive Retail Affiliates.

**IV. Prohibition on Suggestion of Utility Advantage**

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' Competitive Retail Affiliates will receive preferential treatment in the provision of Noncompetitive Services or have any other advantage regarding the provision of Noncompetitive Services nor may APS require the purchase of any Competitive Electric Service from APS' Competitive Retail Affiliates as a condition to providing Noncompetitive Services.
- B. The name or logo of APS as a utility distribution company shall not be used in promotional advertising material circulated by a Competitive Retail Affiliate.

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- C. APS personnel shall not state to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by APS' Competitive Retail Affiliates or any Third Party.
- D. APS shall either direct Customers who inquire about Competitive Retail Services to the Commission for a list of Electric Service Providers or may provide such customers with a copy of the current Commission list of such providers. APS and its employees may not state any recommendation or preference or otherwise attempt to influence a potential customer in their choice of an Electric Service Provider.
- E. APS may not enter into special contracts which provide generation service at a discount to Standard Offer Service customers without the express authorization of the Commission.

**V. Joint Marketing**

APS and its Competitive Retail Affiliate shall not jointly market their respective retail services.

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## Part Four - Competitive Procurement

### I. Applicability

- A. These Competitive Procurement principles shall apply to wholesale acquisition of energy, capacity and physical hedge transactions for APS Standard Offer Service customers.
- B. These Competitive Procurement principles do not apply in cases of emergencies or for short-term acquisitions to maintain system reliability, nor unless otherwise stated, to transactions to satisfy APS' obligations under the Commission's Environmental Portfolio Standard and Demand Side Management programs.

### II. Acceptable Procurement Methods

- A. Purchases through third party, on-line trading systems, including but not limited to the Intercontinental Exchange, Bloomberg, California Independent System Operator, New York Mercantile Exchange or other similar on-line third party systems.
- B. Purchases from qualified, third party, independent energy brokers.
- C. Purchases from non-affiliated entities through auctions or a request for proposals process administered by APS.
- D. Bilateral contracts with non-affiliated entities.
- E. Bilateral contracts with affiliated entities, provided that if APS proposes to procure energy or capacity from an affiliate through a bilateral contract APS will provide, through its Competitive Procurement Website, non-affiliated entities an opportunity to beat any proposed contract before executing the transaction.
- F. Any other Competitive Procurement process approved by the Commission.

### III. Participation of Competitive Electric Affiliate

- A. APS shall not give preferential treatment to its Competitive Electric Affiliates in any Competitive Procurement or in the procurement of Demand Side Management or Environmental Portfolio Standard resources.
- B. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement request for proposals or auction process, an independent monitor selected by Staff will oversee the process.
- C. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, APS shall keep detailed records of any and all contacts with the Competitive Electric Affiliate, including employees and contractors, regarding the Competitive Procurement for the life of the contract plus five years.

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- D. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, personnel involved in the preparation of a Competitive Electric Affiliate's bid in the solicitation process shall not have contact with personnel conducting the solicitation or advising APS in the solicitation concerning any business matter related to the Competitive Procurement except as provided below.
- E. The content of any communication between a Competitive Electric Affiliate that is a bidder in a Competitive Procurement and APS personnel (including contractors and agents) conducting the Competitive Procurement must be contemporaneously posted on the Competitive Procurement Website. A Competitive Electric Affiliate may, however, attend bidders' conferences and other public meetings regarding a Competitive Procurement.
- F. Copies of all bilateral power contracts between APS and Competitive Electric Affiliates shall be retained by APS for a minimum of the life of the contract plus five years.