



MEMORANDUM

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TO: Docket Control
FROM: Ernest C. Johnson
Director
Utilities Division
DATE: August 13, 2003

Arizona Corporation Commission
DOCKETED
CORP COMMISSION
DOCUMENT CONTROL

AUG 13 2003

DOCKETED BY *[Signature]*

RE: STAFF REPORT ON CODE OF CONDUCT FOR THE GENERIC PROCEEDING CONCERNING ELECTRIC RESTRUCTURING ISSUES, ET AL (DOCKET NO. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630, AND E-01933A-02-0069)

Attached is the Staff Report on Code of Conduct required by Decision No. 65743 ("Track B").

EGJ:BEK:rdp

Originator: Barbara Keene

Attachment: Original and 19 Copies

Service List for: Generic Proceeding Concerning Electric Restructuring Issues, et al
Docket No. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630, AND E-01933A-02-0069

Christopher C. Kempley
Chief, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Lyn Farmer
Chief, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**GENERIC PROCEEDING CONCERNING
ELECTRIC RESTRUCTURING ISSUES, ET AL**

**DOCKET NO. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630, AND E-01933A-
02-0069**

CODE OF CONDUCT

AUGUST 13, 2003

STAFF ACKNOWLEDGMENT

The Staff Report on Code of Conduct for the Generic Proceeding Concerning Electric Restructuring Issues. Docket No. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630, and E-01933A-02-0069, was the responsibility of the Staff member listed below.

Barbara Keene
Public Utilities Analyst

**EXECUTIVE SUMMARY
CODE OF CONDUCT**

DOCKET NO. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630, AND E-01933A-02-0069

The Commission decided in Decision No. 65154 ("Track A") that the Codes of Conduct as adopted in Decision No. 62416 (April 3, 2000) and Decision No. 62767 (August 2, 2000) for Arizona Public Service ("APS") and Tucson Electric Power ("TEP"), respectively, must be revised in order to protect the public interest. APS and TEP were ordered to submit modifications as recommended by Staff to their Codes of Conduct. Such proposed revisions were to be filed with the Commission within 60 days of the effective date of Decision No. 65154 (September 10, 2003), with a hearing to be held as provided in A.A.C. R14-2-1616.

On November 12, 2002, TEP filed a letter with the Commission stating that neither TEP nor its parent, UniSource Energy, has a competitive electric service provider, a separate generation affiliate, or an affiliate involved in the marketing and trading of wholesale power. TEP stated that no modifications to TEP's Code of Conduct are necessary.

On November 12, 2003, APS filed modifications to its Code of Conduct.

The Detailed Staff Proposed Solicitation Process, adopted by Decision No. 65743 ("Track B"), recommended that all persons assigned to the solicitation by the utility be subject to a "standard of conduct" established for the purpose of maintaining a separation between the utility and any affiliated entity or person.

Decision No. 65743 directed Staff to file reports in these dockets on the Codes of Conduct previously filed by APS and TEP, within 60 days from the date of the Independent Monitor's final reports. The Staff Reports should include, but not be limited to, an analysis of the Standards of Conduct, their applicability to the respective Codes of Conduct filed by APS and TEP, and recommendations regarding their incorporation into the Codes of Conduct.

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Track A Decision

The Commission decided in Decision No. 65154 ("Track A") that the Codes of Conduct as adopted in Decision No. 62416 (April 3, 2000) and Decision No. 62767 (August 2, 2000) for Arizona Public Service ("APS") and Tucson Electric Power ("TEP"), respectively, must be revised in order to protect the public interest. The current Codes of Conduct need additional provisions and should cover an investor-owned electric utility regulated by the Commission and all affiliates in energy-related fields, including affiliates who sell power at wholesale.

APS and TEP were ordered to submit modifications as recommended by Staff to their Codes of Conduct. At a minimum, the Code of Conduct should address arm's length transactions; access to confidential information; cross-subsidization; preferential treatment to affiliates; joint employment and employee transfer issues; sharing of office space, equipment, and services; proprietary customer information; financing arrangements with affiliates; and conflicts of interest. Such proposed revisions were to be filed with the Commission within 60 days of the effective date of Decision No. 65154 (September 10, 2003), with a hearing to be held as provided in A.A.C. R14-2-1616.

On November 12, 2002, TEP filed a letter with the Commission stating that neither TEP nor its parent, UniSource Energy, has a competitive electric service provider, a separate generation affiliate, or an affiliate involved in the marketing and trading of wholesale power. TEP stated that no modifications to TEP's Code of Conduct are necessary.

On November 12, 2003, APS filed modifications to its Code of Conduct. See Schedule A for APS' current Code of Conduct and Schedule B for a red-lined version of APS' modified Code of Conduct.

Track B Decision

The Detailed Staff Proposed Solicitation Process, adopted by Decision No. 65743 ("Track B"), recommended that all persons assigned to the solicitation by the utility be subject to a "standard of conduct" established for the purpose of maintaining a separation between the utility and any affiliated entity or person. Persons who work for an affiliate, parent, or part of the utility involved in the sale or marketing of resources from generating assets owned by the utility should not participate in the solicitation preparation or evaluation of bids, or have any contact regarding the solicitation with any personnel assigned to conduct the solicitation, except on the same terms as any other bidder. In addition, a protocol should be established for all communications between the utility and all prospective bidders, regardless of whether they are affiliates or third party bidders. The protocol would prohibit the dissemination of any data to an affiliated person that are not provided to all other interested persons on equal terms and at the same time.

Decision No. 65743 directed Staff to file reports in these dockets on the Codes of Conduct previously filed by APS and TEP, within 60 days from the date of the Independent Monitor's final reports. The Independent Monitor's report was filed on June 13, 2003. The Staff

Reports should include, but not be limited to, an analysis of the Standards of Conduct, their applicability to the respective Codes of Conduct filed by APS and TEP, and recommendations regarding their incorporation into the Codes of Conduct.

The Commission set forth the following guidelines to clarify the Commission's position that no exercise of affiliate preferences would be tolerated in the solicitation process:

- APS shall treat non-affiliated generation equally in all respects with affiliated generation in the solicitation process. This requirement extends to any contractual arrangements associated with the bidding and procurement process that APS enters into with any affiliated entity involved in the solicitation and procurement process, including, but not limited to, access to gas capacity or transportation under APS' contract with El Paso Natural Gas Company.
- APS shall keep detailed records of any and all contacts with all non-APS entities, including employees of and contractors for its parent and all affiliates, regarding the initial and subsequent solicitations up through the time that the procurement process is complete. These records shall be maintained for the life of the longest contract, plus five years.
- Employees of and contractors for APS' parent and affiliates, who may be involved in the preparation of a bid in the solicitation process, shall not have contact with employees who will conduct the solicitation, concerning any business matter related to APS' parent or affiliates pertaining to the Track B solicitation.
- For the purposes of the solicitation and procurement, APS shall prohibit all personnel who provide advice to APS in the solicitation process from communicating with any personnel working for or contracted to APS' parent or affiliates who may be involved in the preparation of a bid in the solicitation process, concerning any business matter related to APS' parent or affiliates pertaining to the Track B solicitation.

See Schedule C for APS' current Standards of Conduct for the competitive procurement process.

Staff's Recommendation regarding TEP

Staff understands that TEP currently does not have an affiliate that sells wholesale or competitive retail electricity. However, TEP's parent, UniSource Energy, is nearing completion of the process to purchase Citizens Communications, Electric and Gas Divisions. Staff is not recommending a Code of Conduct between TEP and this new affiliate at this time because the affiliates are regulated by the Commission. Staff will monitor the situation and, if warranted, make a recommendation for a Code of Conduct in the future. If sometime in the future, TEP were to have an affiliate that sells wholesale or competitive retail electricity, then TEP should

file, within 60 days of the formation or acquisition of the affiliate, a revised Code of Conduct for Commission approval.

Staff's Proposed Modifications to APS' Code of Conduct.

A red-lined version of APS' Code of Conduct with Staff's proposed modifications is in Schedule 4. Many of APS' proposed modifications are included. The modifications are explained below by section.

Section I. - Definitions

APS added definitions for "Arm's Length Transaction," "Commission," "Competitive Electric Services," "Competitive Procurement Process," "Competitive Retail Activities," "Competitive Retail Affiliate," "Competitive Wholesale Services," "FERC," "Pinnacle West," and "Shared Services." Staff agrees with the addition of these terms. Staff modified the definition for "Shared Services" by removing "risk management," "energy risk management," and "law" and adding a sentence that indicates that these three items will not be included in "Shared Services." The Independent Monitor's report identified those two shared services as a continuing source of potential conflict during the solicitation.

APS deleted the definitions for "Competitive Activities," "Interim Competitive Activities," and "Same Terms." Staff agrees with the deletion of these terms because they are no longer needed.

APS modified the definitions for "Competitive Electric Affiliate," "Competitive Retail Services," "Confidential Customer Information," "Confidential Information," "Electric Competition Rules," "Extraordinary Circumstance," "Permitted Competitive Retail Activities," "Policies and Procedures," and "Third Party." Staff agrees with most of these modifications. Staff disagrees with APS' modifications to "Electric Competition Rules" to reference the rules in effect on the date of approval of the Code of Conduct instead of future amendments to the rules.

Staff added the definitions from the Standards of Conduct to this part of the Code of Conduct so that all of the definitions are in one place and conflicts can be eliminated. Staff modified the definition of "Commission Staff" to delete the phrase referring to the Competitive Procurement Process, making the definition applicable at all times and not just during the solicitation process, and modified "Procurement Team" to delete the team members because the team members could change over time.

"Competitive Procurement Process" is in both APS' modifications to the Code of Conduct and in the Standards of Conduct. Staff used a modified version of the definition in the Standards of Conduct. "Confidential Information" is in both the current Code of Conduct, as modified by APS and in the Standards of Conduct. Staff combined the two definitions. "Extraordinary Circumstance" is in both APS' modifications to the Code of Conduct and in the Standards of Conduct. Staff used the modified definition in the Code of Conduct and added "Arizona Independent Scheduling Administrator" before "AISA." "Shared Services" was proposed by

APS in the Code of Conduct and also is in the Standards of Conduct. Staff used the definition in the Code of Conduct.

Staff modified the definitions for "Noncompetitive Services" and "Standard Offer Service" to update the rule references.

Section II. – Applicability of Code of Conduct

APS modified this section to clarify and use updated terms. Staff sees no problems with APS' modifications.

Section III. – Treatment of Similarly Situated Persons

APS modified Paragraphs A, B, and C to clarify that the provisions refer to retail. APS also inserted a new Paragraph D regarding the Competitive Procurement Process. Staff sees no problems with the modifications.

Section IV. – Use of Confidential Customer Information

APS modified Paragraphs A and B to clarify that the provisions are regarding other parties engaged in Competitive Electric Services. APS also inserted new Paragraphs C and D regarding Competitive Electric Affiliates. Staff sees no problems with the modifications.

Section V. – Use of the Bill and Promotions within the Bill Envelope

APS modified this section to clarify that the provisions refer to retail. Staff concurs because this section is only applicable to retail.

Section VI. – Customer Telephone calls

No changes are proposed.

Section VII. – Prohibition on Suggestion of Utility Advantage

APS modified this section to update terms and clarify that some of the provisions refer to retail. Staff sees no problems with the modifications and inserted "of" after "purchase" in Paragraph F.

Section VIII. – Accounting for Costs

APS deleted this section and moved the provisions essentially to other locations in the Code of Conduct. It appears reasonable to Staff to have the provisions in more appropriate locations.

Section IX. – Reporting Requirements

APS renumbered this section to be Section VIII, added a due date to the filing requirements, changed the requirement regarding nontariffed transactions between affiliates to be summarized instead of detailed, added a report identifying transfers of employees between affiliates, and added a statement that information submitted would be treated in accordance with A.R.S. § 40-203. Staff sees no problems with the modifications, except with the reference to A.R.S. § 40-203. Staff changed the reference to A.R.S. § 40-204 as more appropriate because A.R.S. § 40-204 refers to reporting requirements.

Section X. – Separation Requirements

APS renumbered this section to be Section IX, added a provision about sharing equipment and facilities, reworded the provision regarding inspection of affiliates' books and records to be in accordance with A.A.C. R14-2-804.A, added a provision that common officers and directors shall not be permitted to participate in the Competitive Procurement Process, and made other minor revisions. Staff sees no problems with APS' modifications. However, Staff reviewed the Pinnacle West Organization Chart of April 4, 2003, that shows the officers of APS, Pinnacle West Energy Corporation, APS Energy Services, and Pinnacle West Capital Corporation. Some of the same officers hold positions in two or more affiliates. For example the Treasurer is the same officer in all four entities. This appears problematic. Officers and Directors may have different goals for the competitive and noncompetitive affiliates. Allowing joint officers and directors may lead to inappropriate decision-making and unfair cost shifting. Unless APS can provide information as to why this structure is justified, Staff recommends that a board member or corporate officer not serve both APS and a competitive electric affiliate.

Section XI. – Transfers of Goods and Services

APS renumbered this section to be Section X, added a provision requiring affiliate transactions to be arm's length, moved two revised paragraphs about subsidization here from Section VIII, added a provision that a governing body could permit an exception from a tariff, clarified the provision that APS would sell to affiliates nontariffed retail goods and services at the higher of cost or market, clarified that affiliates would sell nontariffed retail goods and services to APS at a price not to exceed market, and clarified that sales of competitive wholesale services among APS and its affiliates would be made in accordance with FERC and other applicable requirements. Staff concurs with these modifications but added a sentence to Paragraph D to require the direct and indirect allocators to be listed in the Policies and Procedures (P&Ps). Section XIV.B. provides for APS to notify the Commission of any revisions required to the P&Ps to address modifications to allocation methods or the allocators used in the P&Ps. Therefore, the allocators should be listed in the P&Ps.

Section XII. – Joint Marketing

APS renumbered this section to be Section XI and clarified that the section refers to retail. Staff sees no problems with these modifications.

Section XII. – Financing Arrangements

APS inserted this new section that provides for APS to comply with provisions of A.R.S. §§ 40-285; 40-301, et seq. and A.A.C. R14-2-804 with respect to financing arrangements. Staff sees no problems with this section.

Section XIII. – Dissemination, Education, and Compliance

APS added a provision that training on the Code of Conduct would be provided to employees of APS' affiliates, deleting reference to compliance with the Code of Conduct by APS' agents, and added a statement that unlawful anticompetitive behavior would be a violation of the Code of Conduct. Staff sees no problems with these modifications.

Section XIV – Procedures to Modify the Code of Conduct or P&Ps

APS moved two paragraphs here from Section VIII, but replaced annual filings of P&Ps updates with filing P&Ps updates when there are proposed revisions regarding allocation. Staff concurs because the modifications would reduce unnecessary paperwork.

Section XV. – Dispute Resolution

No changes were made to this section.

Standards of Conduct

Staff has attached the provisions of the Standards of Conduct to the Code of Conduct to make the Standards a permanent part of the Code of Conduct. Staff made the following modifications: deleted reference to inconsistency between Standards of Conduct and the Code of Conduct because the Standards are now incorporated into the Code, renumbered sections to account for deleted sections, deleted the Effective Date section so that the Standards would be effective with the rest of the Code of Conduct, added "in" in the last line of section II.C.2., changed the procedure to modify the Standards of Conduct because the Standards are now incorporated within the Code of Conduct, removed the time limit for Commission Staff audits because Staff has the right to audit at any time, eliminated the exceptions for legal counsel and attorney-client privilege in regard to communications between the Procurement Team and Bidders or Potential Bidders because there is no justification for such exceptions, and deleted the requirement for a password to access the Solicitation Web Site in order to eliminate a barrier to participation in the solicitation.

Staff Recommendations

Staff recommends that if, sometime in the future, TEP were to have an affiliate that sells wholesale or competitive retail electricity, then TEP should file, within 60 days of the formation or acquisition of the affiliate, a revised Code of Conduct for Commission approval.

Code of Conduct

Docket No. E-00000A-02-0051, et al

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Staff recommends that APS adopt the changes described above.

CODE OF CONDUCT

I. Definitions

“APS” means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

“Bill” means the billing invoice for Noncompetitive Services.

“Competitive Activities” means Competitive Electric Affiliates, Interim Competitive Activities, or Permitted Competitive Activities, as those terms are defined in this Code of Conduct.

“Competitive Electric Affiliate” means any business enterprise related to APS that is also an Electric Service Provider.

“Competitive Services” means all aspects of retail electric services described in A.A.C. R14-2-1601(7).

“Confidential Customer Information” means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services or Permitted Competitive Activities. 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 as that term is defined in this Code of Conduct and any other information obtained through the provision of Noncompetitive Services that would provide a competitive advantage to a Competitive Electric Affiliate.

“Distribution Service” means those services described in A.A.C. R14-2-1601(14).

“Electric Competition Rules” means A.A.C. R14-2-1601 to -1617 including all future amendments and modifications.

“Electric Service Provider” means an entity as described in A.A.C. R14-2-1601(15).

“Extraordinary Circumstance” means any situation that requires APS to act in a manner contrary to this Code of Conduct to protect public interest or safety. Examples include the following: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, to prevent equipment damage, or to prevent disconnection of system elements that could adversely affect reliability or safety; (b) a fuel shortage requiring departure from normal operating procedures to minimize the use of a particular fuel; (c) a condition that requires implementation of emergency procedures as defined in the AISA operating protocols or

protocols of any successor; or (d) any applicable law, regulation, court order, or regulatory agency directive requiring APS to act in a manner contrary to the Code of Conduct.

“Interim Competitive Activities” means any Competitive Services, exclusive of those set forth in A.A.C. R14-2-16 15(B), that APS may lawfully provide until December 31, 2002.

“Noncompetitive Services” means those services described in A.A.C. R14-2-1601(29).

“Permitted Competitive Activities” means those Competitive Services that APS may provide pursuant to A.A.C. R14-2-1615(B), except for any service provided as part of Standard Offer Service.

“Policies and Procedures” or “P&P” means those policies and procedures developed by APS to implement this Code of Conduct.

“Same Terms” means that APS shall provide Noncompetitive Services to its Competitive Activities and Third Parties on the same terms and conditions.

“Standard Offer Service” means the bundled provision of retail electric service as described in A.A.C. R14-2-1601(38).

“Third Party” means any Electric Service Provider or other market participants that may lawfully provide Competitive Services to retail customers that do not fall within the definition of APS or Competitive Activities, as those terms are defined in this Code of Conduct.

II. Applicability of Code of Conduct

The Code of Conduct applies to the conduct of APS and its Competitive Activities, unless an Extraordinary Circumstance excuses compliance.

All employees and authorized agents of APS shall comply with this Code of Conduct. Failure to comply with this Code of Conduct will subject the employee to disciplinary actions as described in Section XIII.

III. Treatment of Similarly Situated Persons

- A. APS shall apply its tariffs in the same manner to similarly situated entities. If a tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Activities and all Third Parties and their respective customers.

- B. APS shall process all similar requests for Noncompetitive Services and for Permitted Competitive Activities, if applicable, in the same manner and within the same time period.
- C. APS shall provide access to Distribution Service-specific information (including information about available distribution capability, transmission access, and curtailments) to its Competitive Electric Affiliates and Third Parties concurrently and under the same terms and conditions.

IV. Use of Confidential Customer Information

- A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or Third Party without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any Competitive Electric Affiliate or Third Party seeking Confidential Customer Information that such information may be released only after APS receives the customer's written authorization.

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its Competitive Activities within the Bill, APS shall develop a section in its P&P to ensure equal access to billing services for Third Parties which shall provide that APS will include in its Bill the amounts due for Competitive Services to any Third Party on the Same Terms, upon request.
- B. This provision shall not prevent APS' Competitive Activities or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' Competitive Activities or a Third Party, as applicable, to act as its agent for such purpose.
- C. If APS chooses to insert any advertising or promotional materials for its Competitive Activities or for any Third Party's Competitive Services into the envelope for the Bill or to print such advertisements on the Bill or billing envelope, APS shall develop a section in its P&P to ensure equal access to advertising space in or on the Bill or billing envelope.

VI. Customer Telephone Calls

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

VII. 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 Activities will receive preferential treatment in the provision of Noncompetitive Services or that any other advantage regarding the provision of Noncompetitive Services will accrue to that consumer.
- B. The name or logo of APS as a utility distribution company shall not be used in promotional advertising material circulated by a Competitive Electric Affiliate.
- C. APS personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by APS' Competitive Activities over those of any Third Party.
- D. APS personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by a Third Party over any Competitive Service provided by any other Third Party.
- E. APS personnel providing Noncompetitive Services shall either inform customers who inquire about Competitive Services that a list of Electric Service Providers is available at no charge from the Arizona Corporation Commission on its website or by telephone, and upon request shall provide the customers with the appropriate Arizona Corporation Commission website address and telephone number, or may provide such customers with a copy of the current Arizona Corporation Commission list of such providers.
- F. APS shall not require that a consumer purchase any Competitive Service from APS' Competitive Activities as a condition to providing Noncompetitive Services.
- G. Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service shall not be sold on a discounted basis to Standard Offer Service customers without the express permission of the Arizona Corporation Commission.

VIII. Accounting for Costs

- A. APS shall not subsidize its Competitive Activities through any rates or charges for Noncompetitive Services. However, this provision does not require APS to charge more than its authorized tariff rate for any Noncompetitive Service.

- B. All transactions between APS and its Competitive Electric Affiliate shall be accounted for in accordance with APS' P&P, which shall be developed to describe the cost allocation of all transactions pertaining to APS and its Competitive Electric Affiliates in a manner that ensures that there is no subsidization of the Competitive Electric Affiliate by the Noncompetitive Services of APS. Any material violation of the P&P or other activity which would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.
- C. The initial P&P shall be submitted to the Commission for review and approval. If no action is taken by the Commission or its designee within 60 days of the filing, the P&P shall be deemed approved. Beginning one year from the date of approval of the P&P, APS shall notify the Commission by filing annual updates to the P&P, including any and all Commission approved modifications as specified in subsection D, to allocation methods and changes in direct and indirect allocators used in the P&P. If no action is taken by the Commission or its designee within 30 days of its filing, the update shall be deemed approved.
- D. APS may not make and implement any material change to the P&P without seeking the prior approval of 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.

IX. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis:

- A. A list of all Extraordinary Circumstances excusing APS' compliance with this Code of Conduct and a report explaining the nature, cause, and duration of each incident.
- B. A report detailing the costs associated with all nontariffed transactions between APS and its Competitive Electric Affiliates, with the associated costs reported separately for each business activity and for each transaction.
- C. A report detailing how many non-Standard Offer Service customers were provided metering services or meter reading services pursuant to R14-2-1615.B and how many Electric Service Providers received consolidated billing services from APS pursuant to R14-2-1615.B.

X. Separation Requirements

- A. APS and its Competitive Activities shall be separate corporate affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999).
- B. APS shall not provide Interim Competitive Activities.
- C. APS and its Competitive Electric Affiliates shall keep separate books and records. APS shall keep accounting records that set forth appropriate cost allocations between APS' Noncompetitive Services, and its Competitive Electric Affiliates. All APS records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, books and records of APS' Competitive Electric Affiliates must be made available for inspection by the Arizona Corporation Commission to the extent reasonably necessary to determine compliance with this Code of Conduct.
- D. APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that APS and its Competitive Electric Affiliates may have common officers and directors for corporate support, oversight, and governance, but 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 utilize Confidential Information obtained through the provision of Noncompetitive Service to provide a competitive advantage to a Competitive Electric Affiliate. Contracts for services accounted for in conformance with Section XI shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS and a Competitive Electric Affiliate.
- E. This Code of Conduct shall not prohibit APS and its Competitive Electric Affiliates from purchasing shared services from Pinnacle West Capital Corporation in accordance with the P&P; provided, however, that APS, Pinnacle West, and any Competitive Electric Affiliate shall take appropriate measures to prevent the transfer of Confidential Information between APS and its Competitive Electric Affiliates via Pinnacle West.

XI. Transfers of Goods and Services

- A. APS' tariffed goods and services shall be provided to Third Parties and its Competitive Electric Affiliates at the rates and under the terms and conditions set forth in the tariff.

- B. If APS sells nontariffed goods and services that were developed by APS for sale in the market to its Competitive Electric Affiliates, the transfer price shall be the fair market value. Such goods and services shall be provided to APS' Competitive Electric Affiliates and Third Parties on a non-discriminatory basis.
- C. All other transfers of nontariffed goods and services from APS to APS' Competitive Electric Affiliates shall be at the higher of fully-allocated cost or fair market value.
- D. If APS' Competitive Electric Affiliates transfer any goods and services to APS that were developed for sale by the Competitive Electric Affiliate in the market, the transfer price shall be the fair market value.
- E. All other transfers of goods and services from APS' Competitive Electric Affiliates to APS shall be at the lower of fully-allocated cost or fair market value.

XII. Joint Marketing

APS and its Competitive Electric Affiliates shall not jointly market their respective services.

XIII. Dissemination, Education, and Compliance

- A. Copies of this Code of Conduct shall be provided to 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. A copy of the Code of Conduct shall be maintained on Pinnacle West Capital Corporation's intranet.
- B. Training on the provisions of the Code of Conduct and its implementation shall be provided to all APS employees, as well as to authorized agents that are likely to be engaged in activities subject to the Code of Conduct.
- C. Compliance with the Code of Conduct is mandatory. An APS employee's or agent's failure or refusal to abide by or to act according to such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.
- D. Questions regarding this Code of Conduct should be directed to Pinnacle West Capital Corporation's Business Practices Department. Compliance with this Code of Conduct shall be administered as part of Pinnacle West Capital Corporation's Business Practices Program.

XIV. Procedure to Modify the Code of Conduct

APS or any other interested party, including Commission Staff 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.

XV. 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.

CODE OF CONDUCT

I. Definitions

"APS" means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"Arm's Length Transaction" means a transaction between or among parties, each of whom acts in its own interest and where the final decision is not made by a single individual.

"Bill" means the billing invoice for Noncompetitive Services.

"Commission" means the Arizona Corporation Commission.

~~"Competitive Activities"~~ means ~~Competitive Electric Affiliates, Interim Competitive Activities, or Permitted Competitive Activities, as those terms are defined in this Code of Conduct.~~

~~"Competitive Electric Affiliate"~~ means ~~any business enterprise related to APS that is also an Electric Service Provider~~ those affiliates of APS engaged in Competitive Electric Services.

"Competitive Electric Services" means Competitive Retail Services and Competitive Wholesale Services.

"Competitive Procurement Process" means the process approved by the Commission and required by Decision No. 65154 by which APS will acquire power that cannot be produced from its own existing assets.

"Competitive Retail Activities" means Competitive Retail Services or Permitted Competitive Retail Activities, as those terms are defined in this Code of Conduct.

"Competitive Retail Affiliate" means any affiliate of APS that is engaged in Competitive Retail Services and is an Electric Service Provider.

"Competitive Retail Services" means all aspects of retail electric services described in A.A.C. R14-2-1601(7).

"Competitive Wholesale Services" means the provision of energy products or services to the wholesale market.

"Confidential Customer Information" means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services or Permitted Competitive Retail Activities. 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 as that term is defined in this Code of Conduct and any other nonpublic information regarding Competitive Electric Services obtained solely through the provision of Noncompetitive Services or in the conduct of the Competitive Procurement Process; provided, however, Confidential Information shall not include (i) information that is otherwise available to non-affiliate third parties or (ii) information necessary for a Competitive Electric Affiliate to provide or receive Shared Services that would provide a competitive advantage to a Competitive Electric Affiliate.

“Distribution Service” means those services described in A.A.C. R14-2-1601(14).

“Electric Competition Rules” means A.A.C. R14-2-1601 to -1617 as are lawfully in effect as of the date of approval of this Code of Conduct by the Commission including all future amendments and modifications.

“Electric Service Provider” means an entity as described in A.A.C. R14-2-1601(15).

“Extraordinary Circumstance” means any situation that requires APS to act in a manner contrary to this Code of Conduct to protect public interest or safety. Examples include the following: (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, to prevent equipment damage, or to prevent disconnection of system elements that could adversely affect reliability or safety; (ii) a fuel shortage requiring departure from normal operating procedures to minimize the use of a particular fuel; (iii) a condition that requires implementation of emergency procedures as defined in the AISA operating protocols, the protocols of any regional transmission or similar organization, or the Western Electric Coordinating Council (“WECC”) or protocols of any similar organizations successor; or (iv) any applicable law, regulation, court order, tariff, or directive of a regulatory agency, regional transmission or similar organization or the WECC or any similar organization directive requiring APS to act in a manner contrary to the Code of Conduct.

“FERC” means the Federal Energy Regulatory Commission.

“Interim Competitive Activities” ~~means any Competitive Services, exclusive of those set forth in A.A.C. R14-2-16-15(B), that APS may lawfully provide until December 31, 2002.~~

“Noncompetitive Services” means those services described in A.A.C. R14-2-1601(29).

“Permitted Competitive Retail Activities” means those Competitive Retail Services that APS may provide pursuant to A.A.C. R14-2-1615(B), except for any service provided as part of Standard Offer Service.

"Pinnacle West" means Pinnacle West Capital Corporation as it currently exists, as its name may change, or as any successor enterprise.

"Policies and Procedures" or "P&Ps" means those policies and procedures developed by APS to implement this Code of Conduct.

~~"Same Terms" means that APS shall provide Noncompetitive Services to its Competitive Activities and Third Parties on the same terms and conditions.~~

"Shared Services" means those support services provided by Pinnacle West or any of its affiliates, including but not limited to: human resources; accounting; tax; insurance; risk management; 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 as described in A.A.C. R14-2-1601(38).

"Third Party" means any Electric Service Provider or other market participants other than a Competitive Retail Affiliate that may lawfully provide Competitive Retail Services to retail customers that do not fall within the definition of APS or Competitive Activities, as those terms are defined in this Code of Conduct.

II. Applicability of Code of Conduct

The Code of Conduct applies to the conduct of APS in its interactions with and its Competitive Electric Affiliates relating to Competitive Electric Services Activities, unless an Extraordinary Circumstance excuses compliance.

All employees and authorized agents of APS in their interactions with APS' Competitive Electric Affiliates shall comply with this Code of Conduct. Failure to comply with this Code of Conduct will subject the employee to disciplinary actions as described in Section XIII.C of this Code of Conduct.

III. Treatment of Similarly Situated Persons

- A. APS shall apply its retail tariffs in the same manner to similarly situated entities. If a retail tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Electric Affiliates Activities and all non-affiliate tThird pParties and their respective customers.

- B. APS shall process all similar requests for Noncompetitive Services and for Permitted Competitive Retail Activities, if applicable, in the same manner and within the same time period.
- C. APS shall ~~offer~~provide access to Distribution Service-specific information (including information about available distribution capability, transmission access, and curtailments) to its Competitive Retail Electric Affiliates and Third Parties concurrently and under the same material terms and conditions.
- D. APS shall act in accordance with the Competitive Procurement Process and will not give preferential treatment to its Competitive Electric Affiliates in such process.

IV. Use of Confidential Customer Information

- A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or other Third Party engaged in Competitive Electric Services without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any Competitive Electric Affiliate or other Third Party engaged in Competitive Electric Services seeking Confidential Customer Information that such information may be released only after APS receives the customer's written authorization.
- C. APS shall not provide Confidential Information to a Competitive Electric Affiliate, except as provided in Section IV.A of this Code of Conduct with respect to Customer Confidential Information.
- D. Except as required by Section IX.B of this Code of Conduct, nothing herein or in the P&Ps shall be construed to require any Competitive Electric Affiliate to disclose competitively sensitive or other legally protected information.

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its Competitive Retail Activities within the Bill, APS shall develop a section in its P&Ps to ensure equal access to billing services for any party engaged in Competitive Retail Services Third Parties which shall provide that APS will offer to include in its Bill the amounts due for Competitive Retail Services to any Third Party on the same material terms and conditions, upon request.
- B. This provision shall not prevent a APS' Competitive Retail Affiliate Activities or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement, as long as the customer receiving such

consolidated billing statement has authorized APS' Competitive Retail AffiliateActivities or a Third Party, as applicable, to act as its agent for such purpose.

- C. If APS chooses to insert any advertising or promotional materials for its Competitive Retail AffiliateActivities or for any Third Party's Competitive Retail Services into the envelope for the Bill or to print such advertisements on the Bill or billing envelope, APS shall develop a section in its P&P_s to ensure equal access to advertising space in or on the Bill or billing envelope.

VI. Customer Telephone Calls

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

VII. 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 Electric AffiliatesActivities will receive preferential treatment in the provision of Noncompetitive Services or that any other advantage regarding the provision of Noncompetitive Services will accrue to that consumer.
- B. The name or logo of APS as a utility distribution company shall not be used in promotional advertising material circulated by a Competitive Electric Affiliate.
- C. APS personnel shall not specify to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by APS' Competitive Electric AffiliatesActivities over those of any ~~Third Party~~.
- D. APS personnel shall not specify to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by ~~any Third Party~~ over any Competitive Electric Service provided by any other ~~Third Party~~.
- E. APS personnel providing Noncompetitive Services shall either inform customers who inquire about Competitive Retail Services that a list of Electric Service Providers is available at no charge from the ~~Arizona Corporation Commission~~ on its website or by telephone, and upon request shall provide the customers with the appropriate ~~Arizona Corporation Commission~~ website address and telephone number, or may provide such customers with a copy of the current ~~Arizona Corporation Commission~~ list of such providers.
- F. APS shall not require ~~that a consumer~~ purchase any Competitive Electric Service from APS' Competitive Electric AffiliatesActivities as a condition to providing Noncompetitive Services.

- G. ~~Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service shall not be sold on a discounted basis to Standard Offer Service customers without the express authorization permission of the Arizona Corporation Commission.~~

~~VIII. Accounting for Costs~~

- A. ~~APS shall not subsidize its Competitive Activities through any rates or charges for Noncompetitive Services. However, this provision does not require APS to charge more than its authorized tariff rate for any Noncompetitive Service.~~
- B. ~~All transactions between APS and its Competitive Electric Affiliate shall be accounted for in accordance with APS' P&P, which shall be developed to describe the cost allocation of all transactions pertaining to APS and its Competitive Electric Affiliates in a manner that ensures that there is no subsidization of the Competitive Electric Affiliate by the Noncompetitive Services of APS. Any material violation of the P&P or other activity which would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.~~
- C. ~~The initial P&P shall be submitted to the Commission for review and approval. If no action is taken by the Commission or its designee within 60 days of the filing, the P&P shall be deemed approved. Beginning one year from the date of approval of the P&P, APS shall notify the Commission by filing annual updates to the P&P, including any and all Commission approved modifications as specified in subsection D, to allocation methods and changes in direct and indirect allocators used in the P&P. If no action is taken by the Commission or its designee within 30 days of its filing, the update shall be deemed approved.~~
- D. ~~APS may not make and implement any material change to the P&P without seeking the prior approval of 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.X. Reporting Requirements~~

~~APS shall submit the following information to the Commission on an annual basis each April 15th, beginning on April 15, 2004:~~

- A. ~~A list of all Extraordinary Circumstances excusing APS' compliance with this Code of Conduct and a report explaining the nature, cause, and duration of each incident.~~

- B. A report summarizing detailing the charges costs associated with all nontariffed transactions between APS and its Competitive Electric Affiliates, with the associated charges costs reported separately for each Competitive Electric Affiliate business activity and for each category of service transaction.
- C. A report detailing (i) how many non-Standard Offer Service customers were provided metering services or meter reading services pursuant to R14-2-1615-B and (ii) how many Electric Service Providers received consolidated billing services from APS, both pursuant to R14-2-1615-(B).
- D. A report identifying all transfers between APS and its Competitive Electric Affiliates of employees at the manager level or above.
- E. All information submitted pursuant to this Section VIII of this Code of Conduct shall be treated in accordance with A.R.S. § 40-203.

IXX. Separation Requirements

- A. APS and its Competitive Activities shall be a separate corporate entity from its Competitive Electric Affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999). Unless otherwise permitted herein, APS shall, to the extent practical, operate separately from its Competitive Electric Affiliates. Sharing of equipment and facilities shall be permitted only in accordance with the functional separation requirements set forth in the P&Ps.
- ~~B. APS shall not provide Interim Competitive Activities.~~
- BC. APS and its Competitive Electric Affiliates shall keep separate books and records, and APS shall keep accounting records that set forth appropriate cost allocations between APS' Noncompetitive Services, and its Competitive Electric Affiliates. All APS records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, books and records of APS' Competitive Electric Affiliates will must be made available for inspection by the Arizona Corporation Commission in accordance with A.A.C. R14-2-804.A, to the extent reasonably necessary to determine compliance with this Code of Conduct.
- CD. APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that APS and its Competitive Electric Affiliates may utilize have common officers and directors for corporate support, oversight, and governance, but 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 in the

~~Competitive Procurement Process obtained through the provision of Noncompetitive Service to provide a competitive advantage to a Competitive Electric Affiliate. Contracts for services accounted for in conformance with Section XI 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 a Competitive Electric Affiliate.~~

~~DE. This Code of Conduct shall not prohibit APS and its Competitive Electric Affiliates may utilize from purchasing Shared Services from Pinnacle West Capital Corporation in accordance with Section X of this Code of Conduct and the P&Ps; provided, however, that APS, Pinnacle West, and any Competitive Electric Affiliate shall take appropriate measures to prevent access to the transfer of Confidential Information between APS and by its Competitive Electric Affiliates through such Shared Services via Pinnacle West.~~

XXI. Transfers of Goods and Services

~~A. All transactions between APS and its Competitive Electric Affiliates shall be Arm's Length Transactions, except as provided in this Section X of the Code of Conduct and in the associated provisions of the P&Ps.~~

~~B. APS shall not subsidize its Competitive Electric Affiliates through any rates or charges for Noncompetitive Services. APS shall not, however, be required to charge its Competitive Electric Affiliates more than its authorized tariff rate for any Noncompetitive Service.~~

~~C. Shared Services may be provided by APS to its Competitive Electric Affiliates, and such services shall be accounted for in accordance with the P&Ps, which shall describe the accounting methodology for such services and transactions in a manner that ensures there is no subsidization of the Competitive Electric Affiliates by APS.~~

~~D. APS may acquire Shared Services from Pinnacle West and such services shall be accounted for in accordance with the P&Ps, which shall describe the accounting methodology for such services and transactions in a manner that ensures there is no subsidization of the Competitive Electric Affiliates by APS.~~

~~EA. Any APS' tariffed goods and services shall be provided by APS or its Competitive Electric Affiliates that are subject to a filed tariff shall be provided Third Parties and its Competitive Electric Affiliates 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.~~

~~FB. If APS sells to its Competitive Electric Affiliates nontariffed retail goods and services that were developed by APS for sale in the market to its Competitive~~

~~Electric Affiliates, the transfer price shall be the higher of cost or fair market value. Such goods and services shall be provided to APS' Competitive Electric Affiliates and Third Parties on a non-discriminatory basis.~~

~~C. All other transfers of nontariffed goods and services from APS to APS' Competitive Electric Affiliates shall be at the higher of fully allocated cost or fair market value.~~

~~G.D. If APS' Competitive Electric Affiliates sell to APS nontariffed transfer any retail goods and services to APS that were developed for sale by the Competitive Electric Affiliate in the market the transfer price shall be at a price not to exceed the fair market value.~~

~~H.E. Sales of Competitive Wholesale Services by an among APS and its All other transfers of goods and services from APS' Competitive Electric Affiliates to APS shall be made in accordance with FERC and other applicable requirements at the lower of fully allocated cost or fair market value.~~

XIXH. Joint Marketing

APS and its Competitive ~~Retail~~ Electric Affiliates shall not jointly market their respective retail services.

XII. Financing Arrangements

APS shall comply with the applicable provisions of A.R.S. §§ 40-285; 40-301, et seq.; and A.A.C. R14-2-804, with respect to any financing arrangement between it and its Competitive Electric Affiliates.

XIII. Dissemination, Education, and Compliance

A. Copies of this Code of Conduct shall be provided to 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. A copy of the Code of Conduct shall be maintained on Pinnacle West Capital Corporation's intranet.

B. Training on the provisions of the Code of Conduct and its implementation shall be provided to the employees of all APS and its Competitive Electric Affiliates employees, as well as to authorized agents that are likely to be engaged in activities subject to the Code of Conduct.

C. Compliance with the Code of Conduct is mandatory. The An APS employee's or agent's failure or refusal of an employee of APS to abide by or to act according to the Code of Conduct or the P&Pssuch standards may subject the employee or

~~agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.~~

D. Any activity that would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.

ED. Questions regarding this Code of Conduct should be directed to Pinnacle West Capital Corporation's Business Practices Department. Compliance with this Code of Conduct shall be administered as part of Pinnacle West Capital Corporation's Business Practices Program.

XIV. Procedures to Modify the Code of Conduct or P&Ps

A. APS or any other interested party, including Commission Staff 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 shall notify the Commission of any revisions required to be made to the P&Ps to address modifications to allocation methods or the direct and indirect allocators used in the P&Ps by filing an update to the P&Ps with the Commission. If no action is taken by the Commission or its designee within 30 days of its filing, the update shall be deemed approved.

C. APS may not make and implement any material change to the P&Ps without seeking the prior approval of 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.

XV. 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.

ARIZONA PUBLIC SERVICE COMPANY
STANDARDS OF CONDUCT
FOR THE TRACK B
COMPETITIVE PROCUREMENT PROCESS
March 18, 2003

STANDARDS OF CONDUCT
FOR THE TRACK B
COMPETITIVE PROCUREMENT PROCESS

Arizona Public Service Company ("APS") is committed to complying with the standards of conduct discussed in the Staff Report on Track B: Competitive Solicitation (October 25, 2002). The following Standards of Conduct shall govern the Competitive Procurement Process and supplement the proposed APS Code of Conduct submitted to the Commission by APS on November 12, 2002. In case of any inconsistency between the APS Code of Conduct and these Standards of Conduct, the Standards of Conduct shall govern with respect to the Competitive Procurement Process unless otherwise ordered or authorized by the Commission. Nothing in these Standards of Conduct shall limit APS' ability to comply with other applicable federal or state requirements.

I. Definitions

"**Affiliate**," with respect to APS, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise. Third parties that co-own plants jointly with APS shall not, by virtue of such co-ownership, be considered Affiliates for purposes of these Standards of Conduct.

"**Affiliate Bid Team**" means those employees, officers, directors or contractors of an APS Affiliate that are directly participating in the preparation of a response to an APS request for proposal in the Competitive Procurement Process.

"**APS**" means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"**Bidders**" means that subset of Potential Bidders that both (i) meet the minimum standards as established by the Procurement Team and (ii) submit a Letter of Intent to Bid in the Competitive Procurement Process.

"**Commission**" means the Arizona Corporation Commission.

"**Commission Staff**" means those employees and consultants (other than the Independent Monitor) of the Utilities Division of the Commission designated by the Director in writing as participating in the Competitive Procurement Process.

"Communications Protocol" means the procedure for communications between the Procurement Team and all Potential Bidders or Bidders in the Competitive Procurement Process. The Communications Protocol is attached hereto as Attachment I and incorporated herein by reference.

"Competitive Procurement Process" means the initial Track B solicitation process for APS retail load approved by the Commission and required by Decision No. 65743. The Competitive Procurement Process shall include preparing and conducting the solicitation, evaluating bids and negotiating the definitive agreement(s), but shall not include management or implementation of such agreement(s) after their execution.

"Confidential Information" means any and all written, printed or other materials, regardless of form, provided by a Potential Bidder or Bidder to the Procurement Team to meet pre-qualification and creditworthiness requirements. Confidential Information shall also include, but not be limited to, marketing, operational, economic or financial information or data relating to the Potential Bidder or Bidder that is disclosed to the Procurement Team by the Potential Bidder or Bidder during the Competitive Procurement Process, provided that such information or data is marked "Confidential" by the disclosing Potential Bidder or Bidder and further provided that such information or data is not otherwise publicly available.

"Director" means the Director of the Utilities Division Staff, or his or her designee.

"Extraordinary Circumstance" means any situation that requires APS to act in a manner contrary to these Standards of Conduct to protect system reliability, to protect the public interest, or to ensure the safety of employees or the public.

"Independent Monitor" means the individual(s) retained by the Commission to advise Commission Staff regarding the Competitive Procurement Process.

"Pinnacle West" means Pinnacle West Capital Corporation as it currently exists, as its name may be changed, or as any successor enterprise.

"Potential Bidders" means the list of potential bidders developed by the Procurement Team. With respect to APS Affiliates, the term "Potential Bidder" shall mean the Affiliate Bid Team.

"Procurement Team" means those APS and Pinnacle West employees, officers, directors or contractors designated by APS to conduct or assist in conducting the Competitive Procurement Process for APS. As of March __, 2003, the primary members of the Procurement Team include:

- Thomas Carlson - Head of Trading, Retail Procurement
- Steve McAdams - Manager, Power Contracts

- Gary Zhu - Risk Manager
- Brad Albert and Don Stoneberger - Senior Energy Traders
- Randy Young - Senior Transmission Trader
- John Taggart - Quantitative Analyst
- Lisa Williams - Contract Administrator
- Clark Worthley - Credit Risk Manager
- Sue Mabee - Financial Engineer
- Kelly Bond - Administrative Coordinator

APS may change, add to or subtract from the members of the Procurement Team from time to time consistent with these Standards of Conduct.

"PWEC" means Pinnacle West Energy Corporation as it currently exists, as its name may be changed, or as any successor enterprise, and its subsidiaries.

"Shared Services" means those support services provided by APS or its Affiliates, including but not limited to: human resources; accounting; tax; insurance; risk management; energy risk management; audit services; contract management; information and communication technology; communications; environmental, health and safety; regulatory services; fuel procurement; system dispatch; transportation; security; facilities; shareholder services; law and business practices; public affairs and enterprise finance.

"Solicitation Web Site" means the internet web site established by the Procurement Team for communications with Potential Bidders, whether affiliates or not, that are participating in the Competitive Procurement Process, except for communications of Confidential Information relating to pre-qualification and creditworthiness.

II. Effective Date

These Standards of Conduct shall become effective on March 18, 2003, and shall remain effective throughout the Competitive Procurement Process.

III. Applicability

These Standards of Conduct shall apply only to the Competitive Procurement Process.

IV. Standards of Conduct

A. Rules Governing Employee Conduct

Members of the Procurement Team and APS or APS Affiliate employees assisting the Procurement Team:

1. Shall not assist any Potential Bidder during the Competitive Procurement Process in evaluating the solicitation, preparing a bid in response to the solicitation, or negotiating a definitive agreement except as permitted in these Standards of Conduct or the Communications Protocol;
2. Shall not give preferential treatment to APS Affiliates in the Competitive Procurement Process; and
3. Shall comply with other applicable federal and state requirements, including Code(s) of Conduct, affiliate relations or other similar requirements.

B. Extraordinary Circumstances; Shared Services; Non-Competitive Procurement Process Matters

1. Notwithstanding any other provision in these Standards of Conduct, in an Extraordinary Circumstance, the Procurement Team may take whatever steps are necessary to ensure reliability of the APS system, to protect the public interest, or to ensure the safety of employees or the public.
2. The Procurement Team may consult with or utilize Shared Services or other APS employees, officers or directors provided that such consultation or utilization shall not otherwise circumvent these Standards of Conduct.
3. Nothing in these Standards of Conduct or the Code of Conduct shall be construed to prohibit:
 - a. APS, Pinnacle West or PWEC officers and directors from providing corporate oversight, support and governance to their employees so long as such activities do not favor PWEC in the Competitive Procurement Process or provide PWEC with Confidential Information during the Competitive Procurement Process that is not available to all other Potential Bidders; or
 - b. APS or Pinnacle West employees from communicating with PWEC employees about non-Competitive Procurement Process matters.

C. Communications and Information Access

1. All communications relating to the Competitive Procurement Process between the Procurement Team and Potential Bidders or

Bidders shall be conducted in accordance with the Communications Protocol.

2. Once designated, the Procurement Team shall not provide to any Potential Bidder or Bidder preferential access to information substantively affecting the Competitive Procurement Process. This requirement shall not preclude APS from providing information to those entities that jointly own facilities with APS (or for which APS is the operating agent) to the extent such information is otherwise within the scope of information APS provides such entities the normal course of business.
3. Once designated, the Procurement Team shall make available information substantively affecting the Competitive Procurement Process to all Potential Bidders or Bidders at the same time and on equal terms pursuant to the Communications Protocol.
4. The Procurement Team shall not disclose to any Potential Bidder during the Competitive Procurement Process any Confidential Information obtained from another Potential Bidder without the prior written consent of the disclosing party.
5. If a member of the Procurement Team discloses information in a manner contrary to these Standards of Conduct or the Communications Protocol, the Procurement Team shall promptly inform Commission Staff and the Independent Monitor of such disclosure.

D. Mandatory Compliance

1. Written or electronic copies of these Standards of Conduct shall be provided to all APS and APS Affiliate employees.
2. A copy of the Standards of Conduct shall be maintained on the Solicitation Web Site. To qualify as a Bidder, a party must accept these Standards of Conduct and certify that it will, and that it will require its officers, directors, employees and contractors to, comply with these Standards of Conduct to the extent such Standards of Conduct apply to their activities.
3. Training on the requirements of these Standards of Conduct shall be provided to:
 - a. all members of the Procurement Team;
 - b. all members of any Affiliate Bid Team; and

- c. all APS and APS Affiliate employees assisting the Procurement Team or an Affiliate Bid Team in the Competitive Procurement Process.
4. The failure or refusal to abide by or to act according to these Standards of Conduct by a member of the Procurement Team or Affiliate Bid Team, or an APS or APS Affiliate employee assisting the Procurement Team or Affiliate Bid Team in the Competitive Procurement Process may subject the employee to disciplinary action, up to and including termination of employment.

E. Monitoring by Commission Staff and Independent Monitor

1. To the extent practicable, the Procurement Team shall provide to Commission Staff and the Independent Monitor drafts of all Competitive Procurement Process materials for review and comment prior to posting such materials on the Solicitation Web Site.
2. The Procurement Team shall provide to Commission Staff and the Independent Monitor access upon reasonable request to all written records relating to the Competitive Procurement Process and shall make available members of the Procurement Team upon reasonable request for consultation with Commission Staff and the Independent Monitor relating to the Competitive Procurement Process.
3. To the extent practicable, the Procurement Team shall provide Commission Staff and the Independent Monitor with reasonable advance notice of any scheduled or planned oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process to allow Commission Staff and the Independent Monitor to participate in such communications if desired by Commission Staff or the Independent Monitor.
4. The Procurement Team shall log all oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process consistent with the Communications Protocol and shall make such log available to Commission Staff and the Independent Monitor for review upon reasonable request.

F. Procedure to Modify the Standards of Conduct

APS may modify these Standards of Conduct from time to time after consultation with Commission Staff.

G. Audit Provisions

1. Audits regarding APS' compliance with these Standards of Conduct will be performed by Pinnacle West internal auditors in conformance with its standard audit practices.
2. Commission Staff may audit APS' compliance with these Standards of Conduct either during or within six (6) months of completion of the Competitive Procurement Process.

**ATTACHMENT I
TO THE
STANDARDS OF CONDUCT
FOR THE
COMPETITIVE PROCUREMENT PROCESS

COMMUNICATIONS PROTOCOL**

- I. Scope: This Communications Protocol applies to all substantive communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process.

- II. General:
 - A. Except as provided in this Communications Protocol or in the Standards of Conduct, the Procurement Team shall not disseminate substantive information relating to the Competitive Procurement Process to any Potential Bidder or Bidder except to the extent such information is provided to all other Potential Bidders or Bidders.

 - B. The Procurement Team shall disseminate to Potential Bidders or Bidders substantive information relating to the Competitive Procurement Process by posting such information on the Solicitation Web Site, as set forth in Section III of this Communications Protocol.

 - C. Except for the submittal of sealed bids in response to a RFP and any subsequent negotiations or discussions relating to creditworthiness, all substantive communications from a Potential Bidder or Bidder to the Procurement Team relating to the Competitive Procurement Process shall be submitted to the Procurement Team through the Solicitation Web Site.

- III. Solicitation Web Site and Communications:
 - A. Written Communications and Documentation:
 - 1. Except as otherwise provided in this Communications Protocol, all written communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process shall be done through the Solicitation Web Site.

 - 2. The Procurement Team shall maintain hard copies of all electronic communications between the Procurement Team and Potential

Bidders or Bidders, as well as other written documents, relating to or submitted during the Competitive Procurement Process for the life of the longest agreement resulting from such process, plus five (5) years. Electronic communications may be printed in hard copy and then deleted from the electronic system.

B. Oral Communications:

1. The Procurement Team shall maintain a log of all oral communications between the Procurement Team and any Potential Bidder or Bidder during and relating to the Competitive Procurement Process. The requirement to log such communications shall not apply to communications:
 - a. between legal counsel for APS and a Potential Bidder or Bidder, provided that such communications shall not be a conduit for transmitting substantive information affecting the Competitive Procurement Process in a manner inconsistent with the Standards of Conduct;
 - b. made during workshops, administrative hearings or similar proceedings of the Commission or other regulatory agency;
 - c. made during Bidders Conferences or similar meetings; or
 - d. that are covered by the attorney-client privilege.
2. The log of covered communications shall be generally in the form attached as Exhibit A.

C. Solicitation Web Site:

1. Information relating to the Competitive Procurement Process shall be made available to Potential Bidders, Bidders, the Commission, Commission Staff and the Independent Monitor through the Solicitation Web Site. The Procurement Team shall provide Potential Bidders, Commission Staff and the Independent Monitor who submit a request through the Solicitation Web Site with an identifier and password to access the information on the Solicitation Web Site.
2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information will be posted on the Solicitation Web Site, but such information shall include:

- a. Pre-qualification requirements for becoming a Bidder, including minimum creditworthiness requirements;
- b. Request for Proposal;
- c. Form agreement(s);
- d. Form Letter of Intent to Bid;
- e. Bidder Certification;
- f. Deliverability Analysis;
- g. RMR Study;
- h. Load & Resource Plan;
1. APS Ten Year Plan; and
- j. Questions & Answers.

D. Bidder Specific Information:

1. Bidders may be provided access to certain additional information relating to the Competitive Procurement Process. If so, a Bidder's identifier(s) and password(s) will be coded to provide access to such information.
2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information falls within this category.

CODE OF CONDUCT

I. Definitions

"Affiliate," with respect to APS, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to an entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise. Third parties that co-own plants jointly with APS shall not, by virtue of such co-ownership, be considered Affiliates for purposes of these Standards of Conduct.

"Affiliate Bid Team" means those employees, officers, directors or contractors of an APS Affiliate that are directly participating in the preparation of a response to an APS request for proposal in the Competitive Procurement Process.

"APS" means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"Arm's Length Transaction" means a transaction between or among parties, each of whom acts in its own interest and where the final decision is not made by a single individual.

"Bidders" means that subset of Potential Bidders that both (i) meet the minimum standards as established by the Procurement Team and (ii) submit a Letter of Intent to Bid in the Competitive Procurement Process.

"Bill" means the billing invoice for Noncompetitive Services.

"Commission" means the Arizona Corporation Commission.

"Commission Staff" means those employees and consultants (other than the Independent Monitor) of the Utilities Division of the Commission.

"Communications Protocol" means the procedure for communications between the Procurement Team and all Potential Bidders or Bidders in the Competitive Procurement Process. The Communications Protocol is attached hereto as Attachment I and incorporated herein by reference.

~~"Competitive Activities" means Competitive Electric Affiliates, Interim Competitive Activities, or Permitted Competitive Activities, as those terms are defined in this Code of Conduct.~~

~~"Competitive Electric Affiliate" means any business enterprise related to APS that is also an Electric Service Provider those affiliates of APS engaged in Competitive Electric Services.~~

"Competitive Electric Services" means Competitive Retail Services and Competitive Wholesale Services.

"Competitive Procurement Process" means the Track B solicitation process for APS retail load approved by the Commission and required by Decision No. 65743. The Competitive Procurement Process shall include preparing and conducting the solicitation, evaluating bids and negotiating the definitive agreement(s), but shall not include management or implementation of such agreement(s) after their execution.

"Competitive Retail Activities" means Competitive Retail Services or Permitted Competitive Retail Activities, as those terms are defined in this Code of Conduct.

"Competitive Retail Affiliate" means any affiliate of APS that is engaged in Competitive Retail Services and is an Electric Service Provider.

"Competitive Retail Services" means all aspects of retail electric services described in A.A.C. R14-2-1601(7).

"Competitive Wholesale Services" means the provision of energy products or services to the wholesale market.

"Confidential Customer Information" means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services or Permitted Competitive Retail Activities. 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 as that term is defined in this Code of Conduct and any other nonpublic information regarding Competitive Electric Services obtained solely through the provision of Noncompetitive Services, that would provide a competitive advantage to a Competitive Electric Affiliate. It also means any and all written, printed or other materials, regardless of form, provided by a Potential Bidder or Bidder to the Procurement Team to meet pre-qualification and creditworthiness requirements. Confidential Information also includes, but is not limited to, marketing, operational, economic or financial information or data relating to the Potential Bidder or Bidder that is disclosed to the Procurement Team by the Potential Bidder or Bidder during the Competitive Procurement Process, provided that such information or data is marked "Confidential" by the disclosing Potential Bidder or Bidder and further provided that such information or data is not otherwise publicly available. Confidential Information shall not include (i) information that is otherwise available to non-affiliate third parties or (ii) information necessary for a Competitive Electric Affiliate to provide or receive Shared Services.

"Director" means the Director of the Utilities Division Staff, or his or her designee.

"Distribution Service" means those services described in A.A.C. R14-2-1601(14).

"Electric Competition Rules" means A.A.C. R14-2-1601 to -1617 including all future amendments and modifications.

"Electric Service Provider" means an entity as described in A.A.C. R14-2-1601(15).

"Extraordinary Circumstance" means any situation that requires APS to act in a manner contrary to this Code of Conduct to protect public interest or safety. Examples include the following: (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, to prevent equipment damage, or to prevent disconnection of system elements that could adversely affect reliability or safety; (ii) a fuel shortage requiring departure from normal operating procedures to minimize the use of a particular fuel; (iii) a condition that requires implementation of emergency procedures as defined in the Arizona Independent Scheduling Administrator (AISA) operating protocols, the protocols of any regional transmission or similar organization, or the Western Electric Coordinating Council ("WECC") or protocols of any similar organization successor; or (iv) any applicable law, regulation, court order, tariff, or directive of a regulatory agency, regional transmission or similar organization or the WECC or any similar organization directive requiring APS to act in a manner contrary to the Code of Conduct.

"FERC" means the Federal Energy Regulatory Commission.

~~"Interim Competitive Activities"~~ means any ~~Competitive Services, exclusive of those set forth in A.A.C. R14-2-16-15(B), that APS may lawfully provide until December 31, 2002.~~

"Independent Monitor" means the individual(s) retained by the Commission to advise Commission Staff regarding the Competitive Procurement Process.

"Noncompetitive Services" means those services described in A.A.C. R14-2-1601(2930).

"Permitted Competitive Retail Activities" means those Competitive Retail Services that APS may provide pursuant to A.A.C. R14-2-1615(B), except for any service provided as part of Standard Offer Service.

"Pinnacle West" means Pinnacle West Capital Corporation as it currently exists, as its name may change, or as any successor enterprise.

"Policies and Procedures" or "P&Ps" means those policies and procedures developed by APS to implement this Code of Conduct.

"Potential Bidders" means the list of potential bidders developed by the Procurement Team. With respect to APS Affiliates, the term "Potential Bidder" shall mean the Affiliate Bid Team.

"Procurement Team" means those APS and Pinnacle West employees, officers, directors or contractors designated by APS to conduct or assist in conducting the Competitive Procurement Process for APS. APS may change, add to, or subtract from the members of the Procurement Team from time to time consistent with these Standards of Conduct.

"PWEC" means Pinnacle West Energy Corporation as it currently exists, as its name may be changed, or as any successor enterprise, and its subsidiaries.

~~"Same Terms" means that APS shall provide Noncompetitive Services to its Competitive Activities and Third Parties on the same terms and conditions.~~

Shared Services" means those support services provided by Pinnacle West or any of its affiliates, including but not limited to: human resources; accounting; tax; insurance; risk management; 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. Shared Services shall not include risk management, energy risk management and law.

"Solicitation Web Site" means the internet web site established by the Procurement Team for communications with Potential Bidders, whether affiliates or not, that are participating in the Competitive Procurement Process, except for communications of Confidential Information relating to pre-qualification and creditworthiness.

"Standard Offer Service" means the bundled provision of retail electric service as described in A.A.C. R14-2-1601(389).

~~"Third Party" means any Electric Service Provider or other market participants other than a Competitive Retail Affiliate that may lawfully provide Competitive Retail Services to retail customers that do not fall within the definition of APS or Competitive Activities, as those terms are defined in this Code of Conduct.~~

II. Applicability of Code of Conduct

The Code of Conduct applies to the conduct of APS in its interactions with and its Competitive Electric Affiliates relating to Competitive Electric ServicesActivities, unless an Extraordinary Circumstance excuses compliance.

All employees and authorized agents of APS in their interactions with APS' Competitive Electric Affiliates shall comply with this Code of Conduct. Failure to comply with this Code of Conduct will subject the employee to disciplinary actions as described in Section XIII.C of this Code of Conduct.

III. Treatment of Similarly Situated Persons

- A. APS shall apply its retail tariffs in the same manner to similarly situated entities. If a retail tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Electric Affiliates and ~~all non-affiliate~~ Third Parties and their respective customers.
- B. APS shall process all similar requests for Noncompetitive Services and for Permitted Competitive Retail Activities, if applicable, in the same manner and within the same time period.
- C. APS shall ~~offer~~provide access to Distribution Service-specific information (including information about available distribution capability, transmission access, and curtailments) to its Competitive Retail Electric Affiliates and Third Parties concurrently and under the same material terms and conditions.
- ~~D. APS shall act in accordance with the Competitive Procurement Process and will not give preferential treatment to its Competitive Electric Affiliates in such process.~~

IV. Use of Confidential Customer Information

- A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or ~~other~~Third Party engaged in Competitive Electric Services without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any Competitive Electric Affiliate or ~~other~~Third Party engaged in Competitive Electric Services seeking Confidential Customer Information that such information may be released only after APS receives the customer's written authorization.
- ~~C. APS shall not provide Confidential Information to a Competitive Electric Affiliate, except as provided in Section IV.A of this Code of Conduct with respect to Customer Confidential Information.~~
- ~~D. Except as required by Section IX.B of this Code of Conduct, nothing herein or in the P&Ps shall be construed to require any Competitive Electric Affiliate to disclose competitively sensitive or other legally protected information.~~

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its Competitive Retail Activities within the Bill, APS shall develop a section in its P&Ps to ensure equal access to billing services for any party engaged in Competitive Retail Services~~Third Parties~~ which shall provide that APS will offer to include in its Bill the amounts due for Competitive Retail Services to any Third Party on the same material terms and conditions, upon request.
- B. This provision shall not prevent ~~a~~APS' Competitive Retail Affiliate Activities or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' Competitive Retail Affiliate Activities or a Third Party, as applicable, to act as its agent for such purpose.
- C. If APS chooses to insert any advertising or promotional materials for its Competitive Retail Affiliate Activities or for any Third Party's Competitive Retail Services into the envelope for the Bill or to print such advertisements on the Bill or billing envelope, APS shall develop a section in its P&Ps to ensure equal access to advertising space in or on the Bill or billing envelope.

VI. Customer Telephone Calls

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

VII. 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 Electric Affiliates Activities will receive preferential treatment in the provision of Noncompetitive Services or that any other advantage regarding the provision of Noncompetitive Services will accrue to that consumer.
- B. The name or logo of APS as a utility distribution company shall not be used in promotional advertising material circulated by a Competitive Electric Affiliate.
- C. APS personnel shall not specify to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by APS' Competitive Electric Affiliates Activities ~~over those of any Third Party~~.
- D. APS personnel shall not specify to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by ~~any~~ Third Party over any Competitive Electric Service provided by any other Third Party.
- E. APS personnel providing Noncompetitive Services shall either inform customers who inquire about Competitive Retail Services that a list of Electric Service

Providers is available at no charge from the ~~Arizona Corporation Commission~~ on its website or by telephone, and upon request shall provide the customers with the appropriate ~~Arizona Corporation Commission~~ website address and telephone number, or may provide such customers with a copy of the current ~~Arizona Corporation Commission~~ list of such providers.

- F. APS shall not require ~~that a consumer purchase of any Competitive Electric Service from APS' Competitive Electric Affiliates~~ as a condition to providing Noncompetitive Services.
- G. ~~Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service shall not be sold on a discounted basis to Standard Offer Service customers without the express authorization~~ permission of the ~~Arizona Corporation Commission~~.

VIII. Accounting for Costs

- A. ~~APS shall not subsidize its Competitive Activities through any rates or charges for Noncompetitive Services. However, this provision does not require APS to charge more than its authorized tariff rate for any Noncompetitive Service.~~
- B. ~~All transactions between APS and its Competitive Electric Affiliate shall be accounted for in accordance with APS' P&P, which shall be developed to describe the cost allocation of all transactions pertaining to APS and its Competitive Electric Affiliates in a manner that ensures that there is no subsidization of the Competitive Electric Affiliate by the Noncompetitive Services of APS. Any material violation of the P&P or other activity which would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.~~
- C. ~~The initial P&P shall be submitted to the Commission for review and approval. If no action is taken by the Commission or its designee within 60 days of the filing, the P&P shall be deemed approved. Beginning one year from the date of approval of the P&P, APS shall notify the Commission by filing annual updates to the P&P, including any and all Commission approved modifications as specified in subsection D, to allocation methods and changes in direct and indirect allocators used in the P&P. If no action is taken by the Commission or its designee within 30 days of its filing, the update shall be deemed approved.~~
- D. ~~APS may not make and implement any material change to the P&P without seeking the prior approval of 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.~~

VIIIX. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis each April 15th, beginning on April 15, 2004:

- A. A list of all Extraordinary Circumstances excusing APS' compliance with this Code of Conduct and a report explaining the nature, cause, and duration of each incident.
- B. A report summarizing~~detailing~~ the charges~~costs~~ associated with all nontariffed transactions between APS and its Competitive Electric Affiliates, with the associated charges~~costs~~ reported separately for each Competitive Electric Affiliate~~business activity~~ and for each category of service~~transaction~~.
- C. A report detailing (i) how many non-Standard Offer Service customers were provided metering services or meter reading services pursuant to R14-2-1615.B and (ii) how many Electric Service Providers received consolidated billing services from APS, both pursuant to R14-2-1615.(B).
- D. A report identifying all transfers between APS and its Competitive Electric Affiliates of employees at the manager level or above.
- E. All information submitted pursuant to this Section VIII of this Code of Conduct shall be treated in accordance with A.R.S. § 40-204.

IXX. Separation Requirements

- A. ~~APS and its Competitive Activities shall be a separate corporate entity from its Competitive Electric Affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999). Unless otherwise permitted herein, APS shall, to the extent practical, operate separately from its Competitive Electric Affiliates. Sharing of equipment and facilities shall be permitted only in accordance with the functional separation requirements set forth in the P&Ps.~~
- B. ~~APS shall not provide Interim Competitive Activities.~~
- BC. APS and its Competitive Electric Affiliates shall keep separate books and records, and APS shall keep accounting records that set forth appropriate cost allocations between APS' Noncompetitive Services, and its Competitive Electric Affiliates. All APS records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, bBooks and records of APS' Competitive Electric Affiliates will must be made available for inspection by the Arizona Corporation Commission in accordance with A.A.C. R14-2-804.A. ~~to the extent reasonably necessary to determine compliance with this Code of Conduct.~~

- CD. APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that APS and its Competitive Electric Affiliates may ~~utilize~~ have common officers and directors for corporate support, oversight, and governance. ~~However, any board member or corporate officer of APS may not serve in the same capacity with a competitive electric affiliate but 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 in the Competitive Procurement Process ~~obtained through the provision of Noncompetitive Service to provide a competitive advantage to a Competitive Electric Affiliate.~~ Contracts for services accounted for in conformance with Section XI 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 a Competitive Electric Affiliate.
- DE. ~~This Code of Conduct shall not prohibit APS and its Competitive Electric Affiliates may utilize~~ ~~from purchasing Sshared Sservices from Pinnacle West Capital Corporation in accordance with Section X of this Code of Conduct and the P&Ps; provided, however, that APS, Pinnacle West, and any Competitive Electric Affiliate shall take appropriate measures to prevent access to the transfer of Confidential Information between APS and by its Competitive Electric Affiliates through such Shared Services via Pinnacle West.~~

XI. Transfers of Goods and Services

- A. All transactions between APS and its Competitive Electric Affiliates shall be Arm's Length Transactions, except as provided in this Section X of the Code of Conduct and in the associated provisions of the P&Ps.
- B. APS shall not subsidize its Competitive Electric Affiliates through any rates or charges for Noncompetitive Services. APS shall not, however, be required to charge its Competitive Electric Affiliates more than its authorized tariff rate for any Noncompetitive Service.
- C. Shared Services may be provided by APS to its Competitive Electric Affiliates, and such services shall be accounted for in accordance with the P&Ps, which shall describe the accounting methodology for such services and transactions in a manner that ensures there is no subsidization of the Competitive Electric Affiliates by APS.
- D. APS may acquire Shared Services from Pinnacle West and such services shall be accounted for in accordance with the P&Ps, which shall describe the accounting methodology for such services and transactions in a manner that ensures there is no subsidization of the Competitive Electric Affiliates by APS. The direct and indirect allocators shall be listed in the P&Ps.

- E.A. ~~Any APS' tariffed goods and services shall be provided by APS or its Competitive Electric Affiliates that are subject to a filed tariff shall be provided Third Parties and its Competitive Electric Affiliates 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.~~
- F.B. ~~If APS sells to its Competitive Electric Affiliates nontariffed retail goods and services that were developed by APS for sale in the market to its Competitive Electric Affiliates, the transfer price shall be the higher of cost or fair market value. Such goods and services shall be provided to APS' Competitive Electric Affiliates and Third Parties on a non-discriminatory basis.~~
- C. ~~All other transfers of nontariffed goods and services from APS to APS' Competitive Electric Affiliates shall be at the higher of fully allocated cost or fair market value.~~
- G.D. ~~If APS' Competitive Electric Affiliates sell to APS nontariffed transfer any retail goods and services to APS that were developed for sale by the Competitive Electric Affiliate in the market, the transfer price shall be at a price not to exceed the fair market value.~~
- H.E. ~~Sales of Competitive Wholesale Services by and among APS and its All other transfers of goods and services from APS' Competitive Electric Affiliates to APS shall be made in accordance with FERC and other applicable requirements at the lower of fully allocated cost or fair market value.~~

XIX.H. Joint Marketing

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

XII. Financing Arrangements

APS shall comply with the applicable provisions of A.R.S. §§ 40-285; 40-301, et seq.; and A.A.C. R14-2-804, with respect to any financing arrangement between it and its Competitive Electric Affiliates.

XIII. Dissemination, Education, and Compliance

- A. Copies of this Code of Conduct shall be provided to 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. A copy of the Code of Conduct shall be maintained on Pinnacle West Capital Corporation's intranet.

- B. Training on the provisions of the Code of Conduct and its implementation shall be provided to the employees of all APS and its Competitive Electric Affiliates employees, as well as to authorized agents that are likely to be engaged in activities subject to the Code of Conduct.
- C. Compliance with the Code of Conduct is mandatory. The An APS employee's or agent's failure or refusal of an employee of APS to abide by or to act according to the Code of Conduct or the P&Ps such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.
- D. Any activity that would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.
- ED. Questions regarding this Code of Conduct should be directed to Pinnacle West Capital Corporation's Business Practices Department. Compliance with this Code of Conduct shall be administered as part of Pinnacle West Capital Corporation's Business Practices Program.

XIV. Procedures to Modify the Code of Conduct or P&Ps

- A. APS or any other interested party, including Commission Staff 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 shall notify the Commission of any revisions required to be made to the P&Ps to address modifications to allocation methods or the direct and indirect allocators used in the P&Ps by filing an update to the P&Ps with the Commission. If no action is taken by the Commission or its designee within 30 days of its filing, the update shall be deemed approved.
- C. APS may not make and implement any material change to the P&Ps without seeking the prior approval of 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.

XV. 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.

STANDARDS OF CONDUCT
FOR THE TRACK B
COMPETITIVE PROCUREMENT PROCESS

~~Arizona Public Service Company ("APS") is committed to complying with the standards of conduct discussed in the Staff Report on Track B: Competitive Solicitation (October 25, 2002). The following Standards of Conduct shall govern the Competitive Procurement Process and supplement the proposed APS Code of Conduct submitted to the Commission by APS on November 12, 2002. In case of any inconsistency between the APS Code of Conduct and these Standards of Conduct, the Standards of Conduct shall govern with respect to the Competitive Procurement Process unless otherwise ordered or authorized by the Commission. Nothing in these Standards of Conduct shall limit APS' ability to comply with other applicable federal or state requirements.~~

II. Effective Date

~~These Standards of Conduct shall become effective on March 18, 2003, and shall remain effective throughout the Competitive Procurement Process.~~

III. Applicability

These Standards of Conduct shall apply only to the Competitive Procurement Process.

IV. Standards of Conduct

A. Rules Governing Employee Conduct

Members of the Procurement Team and APS or APS Affiliate employees assisting the Procurement Team:

1. Shall not assist any Potential Bidder during the Competitive Procurement Process in evaluating the solicitation, preparing a bid in response to the solicitation, or negotiating a definitive agreement except as permitted in these Standards of Conduct or the Communications Protocol;
2. Shall not give preferential treatment to APS Affiliates in the Competitive Procurement Process; and
3. Shall comply with other applicable federal and state requirements, including Code(s) of Conduct, affiliate relations or other similar requirements.

B. Extraordinary Circumstances; Shared Services; Non-Competitive Procurement Process Matters

1. Notwithstanding any other provision in these Standards of Conduct, in an Extraordinary Circumstance, the Procurement Team may take whatever

steps are necessary to ensure reliability of the APS system, to protect the public interest, or to ensure the safety of employees or the public.

2. The Procurement Team may consult with or utilize Shared Services or other APS employees, officers or directors provided that such consultation or utilization shall not otherwise circumvent these Standards of Conduct.
3. Nothing in these Standards of Conduct or the Code of Conduct shall be construed to prohibit:
 - a. APS, Pinnacle West or PWEC officers and directors from providing corporate oversight, support and governance to their employees so long as such activities do not favor PWEC in the Competitive Procurement Process or provide PWEC with Confidential Information during the Competitive Procurement Process that is not available to all other Potential Bidders; or
 - b. APS or Pinnacle West employees from communicating with PWEC employees about non-Competitive Procurement Process matters.

C. Communications and Information Access

1. All communications relating to the Competitive Procurement Process between the Procurement Team and Potential Bidders or Bidders shall be conducted in accordance with the Communications Protocol.
2. Once designated, the Procurement Team shall not provide to any Potential Bidder or Bidder preferential access to information substantively affecting the Competitive Procurement Process. This requirement shall not preclude APS from providing information to those entities that jointly own facilities with APS (or for which APS is the operating agent) to the extent such information is otherwise within the scope of information APS provides such entities in the normal course of business.
3. Once designated, the Procurement Team shall make available information substantively affecting the Competitive Procurement Process to all Potential Bidders or Bidders at the same time and on equal terms pursuant to the Communications Protocol.
4. The Procurement Team shall not disclose to any Potential Bidder during the Competitive Procurement Process any Confidential Information obtained from another Potential Bidder without the prior written consent of the disclosing party.
5. If a member of the Procurement Team discloses information in a manner contrary to these Standards of Conduct or the Communications Protocol,

the Procurement Team shall promptly inform Commission Staff and the Independent Monitor of such disclosure.

D. Mandatory Compliance

1. Written or electronic copies of these Standards of Conduct shall be provided to all APS and APS Affiliate employees.
2. A copy of the Standards of Conduct shall be maintained on the Solicitation Web Site. To qualify as a Bidder, a party must accept these Standards of Conduct and certify that it will, and that it will require its officers, directors, employees and contractors to, comply with these Standards of Conduct to the extent such Standards of Conduct apply to their activities.
3. Training on the requirements of these Standards of Conduct shall be provided to:
 - a. all members of the Procurement Team;
 - b. all members of any Affiliate Bid Team; and
 - c. all APS and APS Affiliate employees assisting the Procurement Team or an Affiliate Bid Team in the Competitive Procurement Process.
4. The failure or refusal to abide by or to act according to these Standards of Conduct by a member of the Procurement Team or Affiliate Bid Team, or an APS or APS Affiliate employee assisting the Procurement Team or Affiliate Bid Team in the Competitive Procurement Process may subject the employee to disciplinary action, up to and including termination of employment.

E. Monitoring by Commission Staff and Independent Monitor

1. To the extent practicable, the Procurement Team shall provide to Commission Staff and the Independent Monitor drafts of all Competitive Procurement Process materials for review and comment prior to posting such materials on the Solicitation Web Site.
2. The Procurement Team shall provide to Commission Staff and the Independent Monitor access upon reasonable request to all written records relating to the Competitive Procurement Process and shall make available members of the Procurement Team upon reasonable request for consultation with Commission Staff and the Independent Monitor relating to the Competitive Procurement Process.

3. To the extent practicable, the Procurement Team shall provide Commission Staff and the Independent Monitor with reasonable advance notice of any scheduled or planned oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process to allow Commission Staff and the Independent Monitor to participate in such communications if desired by Commission Staff or the Independent Monitor.
4. The Procurement Team shall log all oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process consistent with the Communications Protocol and shall make such log available to Commission Staff and the Independent Monitor for review upon reasonable request.

F. Procedure to Modify the Standards of Conduct

~~APS may modify~~ These Standards of Conduct may be modified in accordance with Section XIV.A. from time to time after consultation with Commission Staff.

G. Audit Provisions

1. Audits regarding APS' compliance with these Standards of Conduct will be performed by Pinnacle West internal auditors in conformance with its standard audit practices.
2. Commission Staff may audit APS' compliance with these Standards of Conduct at any time~~either during or within six (6) months of completion of the Competitive Procurement Process.~~

**ATTACHMENT I
TO THE
STANDARDS OF CONDUCT
FOR THE
COMPETITIVE PROCUREMENT PROCESS

COMMUNICATIONS PROTOCOL**

- I. Scope: This Communications Protocol applies to all substantive communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process.

- II. General:
 - A. Except as provided in this Communications Protocol or in the Standards of Conduct, the Procurement Team shall not disseminate substantive information relating to the Competitive Procurement Process to any Potential Bidder or Bidder except to the extent such information is provided to all other Potential Bidders or Bidders.

 - B. The Procurement Team shall disseminate to Potential Bidders or Bidders substantive information relating to the Competitive Procurement Process by posting such information on the Solicitation Web Site, as set forth in Section III of this Communications Protocol.

 - C. Except for the submittal of sealed bids in response to an RFP and any subsequent negotiations or discussions relating to creditworthiness, all substantive communications from a Potential Bidder or Bidder to the Procurement Team relating to the Competitive Procurement Process shall be submitted to the Procurement Team through the Solicitation Web Site.

- III. Solicitation Web Site and Communications:
 - A. Written Communications and Documentation:
 - 1. Except as otherwise provided in this Communications Protocol, all written communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process shall be done through the Solicitation Web Site.

 - 2. The Procurement Team shall maintain hard copies of all electronic communications between the Procurement Team and Potential Bidders or Bidders, as well as other written documents, relating to or submitted during

the Competitive Procurement Process for the life of the longest agreement resulting from such process, plus five (5) years. Electronic communications may be printed in hard copy and then deleted from the electronic system.

B. Oral Communications:

1. The Procurement Team shall maintain a log of all oral communications between the Procurement Team and any Potential Bidder or Bidder during and relating to the Competitive Procurement Process. The requirement to log such communications shall not apply to communications:
 - a. ~~between legal counsel for APS and a Potential Bidder or Bidder, provided that such communications shall not be a conduit for transmitting substantive information affecting the Competitive Procurement Process in a manner inconsistent with the Standards of Conduct;~~
 - ab. made during workshops, administrative hearings or similar proceedings of the Commission or other regulatory agency; or
 - be. made during Bidders Conferences or similar meetings; ~~or~~
 - d. ~~that are covered by the attorney-client privilege.~~
2. The log of covered communications shall be generally in the form attached as Exhibit A.

C. Solicitation Web Site:

1. Information relating to the Competitive Procurement Process shall be made available to Potential Bidders, Bidders, the Commission, Commission Staff, and the Independent Monitor through the Solicitation Web Site. ~~The Procurement Team shall provide Potential Bidders, Commission Staff and the Independent Monitor who submit a request through the Solicitation Web Site with an identifier and password to access the information on the Solicitation Web Site.~~
2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information will be posted on the Solicitation Web Site, but such information shall include:
 - a. Pre-qualification requirements for becoming a Bidder, including minimum creditworthiness requirements;
 - b. Request for Proposal;

- c. Form agreement(s);
- d. Form Letter of Intent to Bid;
- e. Bidder Certification;
- f. Deliverability Analysis;
- g. Reliability Must Run (RMR) Study;
- h. Load and& Resource Plan;
- i. APS Ten Year Plan; and
- j. Questions and& Answers.

D. Bidder Specific Information:

- 1. Bidders may be provided access to certain additional information relating to the Competitive Procurement Process. ~~If so, a Bidder's identifier(s) and password(s) will be coded to provide access to such information.~~
- 2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information falls within this category.

