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BEFORE THE ARIZONA CORPORATION COMMISSION

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1 WILLIAM A. MUNDELL
2 Chairman

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL

3 JIM IRVIN
4 Commissioner

OCT 16 2002

5 MARC SPITZER
6 Commissioner

DOCKETED BY *CAZ*

7 IN THE MATTER OF THE APPLICATION OF
8 ARIZONA PUBLIC SERVICE COMPANY FOR AN
9 ORDER OR ORDERS AUTHORIZING IT TO ISSUE,
10 INCUR, OR ASSUME EVIDENCES OF LONG-
11 TERM INDEBTEDNESS; TO ACQUIRE A
12 FINANCIAL INTEREST OR INTERESTS IN AN
13 AN AFFILIATE OR AFFILIATES; TO LEND
14 MONEY TO AN AFFILIATES OR AFFILIATES;
15 AND TO GUARANTEE THE OBLIGATIONS OF AN
16 AFFILIATE OR AFFILIATES

DOCKET NO. E-01345A-02-0707

17 **MOTION FOR PROTECTIVE ORDER**

18 Arizona Public Service Company ("APS" or "Company") hereby submits this
19 Motion for Protective Order ("Motion") to prevent the disclosure to the competitors of
20 APS and its affiliates' of highly confidential trade secret information in the above-
21 captioned docket. As discussed further below, APS proposes a two-track process to
22 protect confidential, proprietary, and (most importantly) trade secret information
23 (collectively referred to herein as "Confidential Information") sought by Staff and
24 Intervenors through discovery in this proceeding.

25 First, Confidential Information will be provided to Commission Staff, the
26 Residential Utility Consumer Office ("RUCO"), and the Arizona Utility Investors
Association ("AUIA") through standard protective agreements authored in large part by

1 Staff counsel.¹ The same information will be provided to outside counsel and independent
2 testifying experts of the merchant plant parties (“Merchant Intervenors”), including, for
3 this purpose, Tucson Electric Power Company, pursuant to a form of Protective
4 Agreement virtually identical to that already agreed to by Panda/TECO and APS in
5 Docket No. E-01345A-01-0822, excepting again a provision indicating that any access to
6 redacted materials will be in accordance with this requested Protective Order. A copy of
7 such proposed Protective Agreement is attached as Exhibit A and is being tendered to
8 each of the merchant intervenors contemporaneously with the filing of this Motion.

9 The second track is the primary subject of the instant Motion. APS proposes to
10 redact small amounts of highly confidential competitive data that, if disclosed to a
11 Merchant Intervenor, could provide such Merchant Intervenor with a competitive
12 advantage vis-a-vis APS or its affiliates or affect the competitive bidding process under
13 Track B.² Access to redacted information, including access by Staff, RUCO, would, as a
14 general rule, be prohibited by this Protective Order.³ If a party contended that it could not
15 proceed with its analysis of the Application or the Company’s testimony without the
16 redacted information, the Administrative Law Judge (“ALJ”) would review the
17 unredacted document(s) in camera and determine whether to permit disclosure to a

18 ¹ APS tendered a draft of such an agreement to Staff on October 10, 2002. The draft was identical to
19 a Protective Agreement already entered into between Staff and Citizens excepting the substitution of APS
20 for Citizens and the inclusion of a paragraph indicating that any access to redacted material in Confidential
21 Information would be in accordance with the Protective Order requested herein. Staff declined to execute
the tendered Protective Agreement. APS and Staff have subsequently worked out an interim solution to
allow Staff access to Confidential Information subject to the aforesaid redacted portions pending a ruling
on the Company’s Motion.

22 ² Staff or Intervenors could also utilize this procedure in the event they were requested to provide
23 similar competitively damaging information.

24 ³ APS would like to make it clear that it has no objection to providing even the redacted information
25 to Staff and RUCO under the standard form of Protective Agreement that has customarily been used with
26 these agencies. However, in Docket No. E-01345A-01-0822, the Commission treated this disclosure to
Staff and RUCO as a waiver of the Company’s right to prevent Merchant Intervenors from receiving
similar disclosure. APS continues to believe that decision was bad policy when it was made and is
certainly inappropriate in this procedure.

1 merchant intervenor's attorneys or experts who are not involved in Track B or in the
2 competitive sale or purchase of power. This Motion is supported by the following
3 Memorandum of Points and Authorities.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. THE COMMISSION HAS THE AUTHORITY TO PROTECT A PARTY'S CONFIDENTIAL**
6 **INFORMATION.**

7 The Commission clearly has the authority to protect confidential, proprietary, and
8 trade secret information of regulated corporations during its proceedings. The protection
9 afforded must recognize two facts of litigation before the Commission: (1) intervention is
10 granted far more liberally than in Superior Court,⁴ and (2) the nature of proceedings, the
11 relief requested, and the Commission's review are far different from a typical Superior
12 Court case and frequently involve the most competitively-sensitive commercial matters of
13 regulated companies and their affiliates.⁵ However, even apart from such general context,
14 Rule 26(c)(7), Ariz. R. Civ. P., specifically recognizes that it is appropriate to protect
15 against the disclosure of Confidential Information when managing discovery in a litigated
16 proceeding. Such rule is incorporated by reference in the Commission's Rules of Practice
17 and Procedure. A.A.C. R14-3-101 (A).

18 ⁴ This proceeding is a good example. Under the applicable rules in Superior Court, it is unlikely for
19 a number of reasons that the merchant generators would have satisfied the requirements for permissive
20 intervention under Rule 24(b). *See, e.g., Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993) (an
21 economic stake in the litigation insufficient to give rise to protected interest); *Chiglo v. City of Preston*,
22 104 F.3d 185, 187 (8th Cir. 1997) (requiring a "strong showing" that interests of would-be intervenor is
23 not protected by existing party when the government is a party and the interests asserted are within the
24 realm of sovereign interests, because the government entity is presumed to represent the interests of its
25 citizens). *See also United States v. VISA U.S.A.*, slip op., 2000 U.S. Dist. LEXIS 11872 (Aug. 18, 2000)
(would-be intervenor and competitor argued that its interests aligned closely with interests of consumers
26 and merchants, but court denied intervention where government was a party and no bad faith or
malfeasance of the government is shown).

⁵ For example, a corporation that is not rate-regulated by the Commission would not normally have
to seek judicial relief in a Superior Court when it sought to loan money or guarantee the indebtedness of an
affiliated corporation.

1 The pertinent portions of Rule 26(c), Ariz. R. Civ. P., provide:

2 [T]he Court in which the action is pending . . . may make any
3 order which justice requires to protect a party or person from
4 annoyance, embarrassment, oppression, undue burden or
5 expense, including one or more of the following: . . . (7) that a
6 trade secret or other confidential research, development or
7 commercial information not be disclosed or be disclosed only
8 in a designated way. [Emphasis added.]

9 When the production of confidential information to a competitor may adversely affect the
10 disclosing party, Courts have invoked Rule 26(c) to prohibit or severely restrict
11 disclosure. *See, e.g., Tonnemacher v. Sasak*, 155 F.R.D. 193, 194-95 (D. Ariz. 1994)
12 (applying the equivalent federal rule); *Wang Lab v. CFR Assocs.*, 125 F.R.D. 10, 13 (D.
13 Mass. 1989) (same).⁶ The trial judge has broad discretion to appropriately apply Rule
14 26(c)—ranging from to disclosure only to the Court for *in camera* consideration to
15 disclosure only to counsel or independent experts. *See Ronson Corp. v. Liquifin*
16 *Aktiengesellschaft*, 370 F. Supp. 597, 600-01 (D.N.J. 1974) (limiting confidential
17 commercial information to *in camera* inspection by judge); *Sega Enterp. v. Accolade*, 977
18 F.2d 1510, 1532 (9th Cir. 1992) (limiting disclosure to counsel or independent experts).
19 *See also Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992)
20 (prohibiting access to employees involved in competitive decision-making).

21 **II. REDACTION AS PROVIDED IN THE PROPOSED PROTECTIVE AGREEMENT AND**
22 **THIS MOTION IS APPROPRIATE FOR DISCOVERY IN THIS PROCEEDING.**

23 The discovery that both Staff and one of the merchant generator intervenors
24 (Panda/TECO) in this proceeding have already requested will require the production of
25 Confidential Information. Copies of Staff's first two data requests and Panda/TECO's first
26 data requests are attached as Exhibits B, C, and D respectively. Responsive information to
27 these data requests will include APS', PWCC's and PWEC's business strategy, corporate

⁶ Although generally not bound by decisions, Arizona courts look to federal opinions for guidance. *See Cornet Stores v. Superior Court*, 108 Ariz. 84, 86 492 P.2d 1191, 1193 (1972).

1 plant siting strategy, operational forecasts of sales, costs, and revenues, confidential
2 internal corporate communications and financial projections, rating agency and lender
3 communications, financing details and strategy, and other information that is confidential,
4 proprietary, or competitively-sensitive. Further, at the direction of the ALJ, these
5 responses will eventually be shared with numerous other competitors of APS and its
6 affiliates.

7 Confidential Information generally can be divided into two broad categories. The
8 first category is information that is confidential and should be generally protected from
9 broad disclosure. However, this first category of Confidential Information does not afford
10 the merchant intervenors a competitive advantage in wholesale power or potentially give
11 them an advantage over others and APS in the Track B competitive procurement. The
12 second category is information that is not only confidential, but is of a trade secret nature
13 and, if disclosed, could competitively disadvantage APS or an affiliate or adversely affect
14 competitive bidding in Track B.

15 The attached Protective Agreement and the analogous proposed Protective
16 Agreement that APS has provided Staff, and is providing RUCO and AUIA, addresses
17 these two levels of confidentiality. For most Confidential Information, the attached
18 Protective Agreement permits a merchant intervenor's outside counsel and testifying
19 expert(s) to access the information, but limits its use to this proceeding. Thus, the
20 testifying expert could not use any Confidential Information obtained in this proceeding in
21 rendering any advice to his or her client outside of this docket. Also, as with the Protective
22 Agreement used in Docket No. E-1345A-01-0822 (the variance proceeding), APS may
23 consent to broader disclosure of confidential information upon request by the merchant
24 intervenor. Any unresolved dispute over such wider access would be brought to the
25 presiding Administrative Law Judge.

26

1 For information that could competitively disadvantage APS or an affiliate, or that
2 could adversely impact competitive bidding in the Track B proceeding, APS could redact
3 such highly-confidential information. The redaction will still allow the requesting party to
4 see the underlying document containing the redacted information. They will know the
5 general category type of the redacted information and the use to which such redacted
6 information was applied. And they will know the nature of the redacted information itself
7 (for example, that it was a projected heat rate or a listing of potential plant site) but not the
8 specific competitively-sensitive numbers, plans or ideas. Disclosure of this redacted
9 information would only be permitted upon a showing of necessity after an *in camera*
10 review by the ALJ, and only then to a merchant generator's representatives who have no
11 part in Track B or competitive sales or procurement of power.

12 Redaction is appropriate in these circumstances, rather than limited disclosure
13 under terms of a protective agreement. *Cf. Brown Bag*, 960 F.2d at 1470-71. In this case,
14 like *Brown Bag*, disclosure of information to agents or employees of an Intervenor that are
15 involved in Track B or competitive procurement raises several difficulties. First, there is a
16 risk of inadvertent disclosure and the difficulty of the agents and experts to "lock up trade
17 secrets in [their] mind, safe from inadvertent disclosure ... once he had read the
18 documents." *Id.* at 1471. Second, it places these agents and employees in the "untenable
19 position" of having to refuse to provide advice on issues that they were retained to
20 address. *Id.* Further, if an Intervenor shows that access to redacted information is
21 necessary for them to evaluate APS application, a process is established to address such
22 concerns.

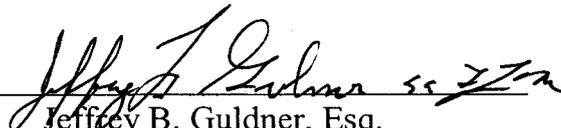
23 **III. CONCLUSION.**

24 Given the relatively focused nature of this proceeding (as opposed to the Generic
25 Investigation), the statements made by the merchant generator intervenors that they did
26

1 not intend to unduly broaden or enlarge the proceeding, and the at most tangential and
2 admittedly "competitive" interests of these merchant intervenors, APS believes that the
3 method of addressing confidential and competitively-sensitive information discussed
4 above strikes an appropriate balance for the management of Confidential Information
5 requested in discovery. It accommodates the accelerated five-business day discovery turn
6 around established in this docket. Further, this approach is consistent with applicable
7 judicial precedent regarding management of Confidential Information in litigated
8 proceedings and is within the case-management discretion of the ALJ and the
9 Commission. Accordingly, APS respectfully requests that the ALJ enter a protective order
10 in the form attached hereto as Exhibit E.

11 RESPECTFULLY SUBMITTED this 16th day of October 2002.

12 SNELL & WILMER

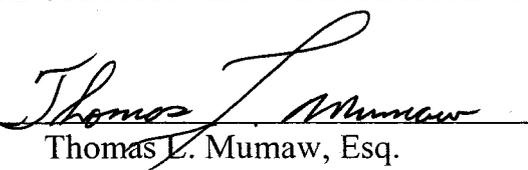
13
14 By:  ss JFG

15 Jeffrey B. Guldner, Esq.

16 Matthew P. Feeney, Esq.

17 and

18 PINNACLE WEST CAPITAL
19 CORPORATION LAW DEPARTMENT

20 By: 

21 Thomas L. Mumaw, Esq.

22 Attorneys for Arizona Public Service
23 Company
24
25
26

1 The original and 10 copies of the foregoing were
filed this 16th day of October, 2002 with:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington
4 Phoenix, AZ 85007.

5 Copies of the foregoing mailed, faxed or
transmitted electronically this 16th
6 day of October, 2002 to:

7 All parties of record.

8 
9 Vicki DiCola

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EXHIBIT A

PROTECTIVE AGREEMENT October 16, 2002

Docket No. E-01345A-02-0707

WHEREFORE, Arizona Public Service Company ("APS") and _____ ("Intervenor"), for the purposes of Discovery under Docket No. E-01345A-02-0707 agree as follows:

1. Each document or item designated by APS or Intervenor to be confidential or proprietary and any copies, notes, materials, extracts, or summaries in any form whatsoever, mechanical, electronic, or otherwise, derived or prepared from said document or item shall be designated as "Confidential Information." All Confidential Information provided to any party pursuant to this Agreement shall be marked by the producing party with a designation indicating its confidential nature.
2. For purposes of this Agreement, Intervenor or APS may redact Confidential Information that contains information on current or future energy business strategies and/or similarly competitively-sensitive information that Intervenor or APS or its affiliates in good faith determine will (a) competitively disadvantage the redacting party or an affiliate, or (b) adversely affect the competitive bidding process being developed in Track B. Access (if any) to the redacted portions of materials designated as Confidential Information shall only be allowed pursuant to and in accordance with the provisions of a Protective Order issued by the Commission or ALJ. Documents with redacted information will, if otherwise appropriate under the terms of this Agreement, also be marked as Confidential Information and be treated as such pursuant to this Agreement.
3. Except as set forth in Paragraph 4, the Confidential Information shall not be disclosed to any person other than independent contractor attorneys or testifying independent experts in the above dockets who have first executed the attached Exhibit A and have agreed to be bound by the terms and conditions of this Agreement. In no event shall Confidential Information be used by any person for any purpose other than the litigation in this Docket No. E-01345A-02-0707.
4. The Confidential Information provided pursuant to the terms of this Agreement may be disclosed by any signatory to this Agreement to paralegals and clerical employees of the attorney or expert who are associated for the purposes of the proceedings in Docket No. E-01345A-02-0707 only to the extent such disclosure is necessary. Such disclosure may be made only if the non-signatory is provided with a copy of this Agreement and agrees to be bound by its terms.
5. The signatories to this Agreement and Exhibit A and persons subject to Paragraph 4 shall treat the Confidential Information confidentially and no such person shall use any

such Confidential Information in a manner that might foreseeably result in, or require, disclosure of such materials and any other information contained therein, to any persons not a signatory to this Agreement, except as provided in Paragraph Nos. 4 and 8.

6. All Confidential Information claimed by APS or Intervenor, respectively, to be protected under the provisions of this Agreement and which is in the possession of Intervenor or APS, respectively, shall be kept in a secure location by such persons in files, folders, or containers separate from other records, files and materials of the person and in a manner reasonably calculated to prevent unauthorized disclosure or access.

7. By releasing Confidential Information pursuant to this Agreement, APS and Intervenor retain in all respects every privilege and claim to confidentiality each heretofore has had, and hereafter may have with respect to all such Confidential Information. Nor does this Agreement itself require the production of any information, including but not limited to "Redacted Information" pursuant Paragraph 2. The provision of the Confidential Information herein shall constitute neither (1) disclosure of the Confidential Information, nor (2) full or partial waiver of any claim of privilege as to the subject matter of the Confidential Information.

8. Unless APS or Intervenor have given its consent in writing, no portion of the Confidential Information may be submitted to, or publicly filed with, the Commission as a part of any hearings or other proceeding or otherwise disclosed in any manner unless: (a) the party seeking disclosure first presents to the assigned Commission Administrative Law Judge (or to this Commission's Chief Administrative Law Judge, if no other Administrative Law Judge has been assigned to the matter), and provides a copy to APS or Intervenor, as required, an application requesting disclosure and setting forth the specific grounds upon which it claims that the Confidential Information to be disclosed, and (b) the Administrative Law Judge rules that the Confidential Information or a portion thereof may be disclosed, provided however, that if neither Party disputes that the Confidential Information is confidential and relevant to the proceeding, then the Confidential Information may be directly submitted under seal pursuant to Paragraph 9.

9. Any portion of the Confidential Information that is so submitted or filed with the Commission in accordance with the Paragraph 8 and any portion of the Commission's official record referring to such portion shall be placed under seal, and shall be subject to the public release or inspection (other than by a signatory to this Agreement or the assigned Administrative Law Judge and the Commissioners or their aides) only by order of the Commission, which order shall not become effective for at least ten (10) business days after entry and which order the parties agree shall not be subject to A.R.S. § 40-254(F), A.R.S. § 40-245.01(F), or art. XV, § 17, Ariz. Const.

10. In the event that APS or Intervenor wish to have a person other than those described in Paragraphs 3 and 4 above execute Exhibit A and become bound by the terms and conditions of this Agreement, APS or Intervenor shall seek agreement from the other party. If agreement is reached, the person in question shall have access to the Confidential Information. If no agreement is reached, the parties shall submit their

dispute to the assigned Administrative Law Judge (or to the Commission's Chief Administrative Law Judge, if no other Administrative Law Judge has been assigned to this matter) for resolution in accordance with the procedure set forth in Paragraph 9.

11. Confidential Information shall remain available to the parties until all Commission proceedings relating to the Confidential Information are concluded and no longer subject to judicial review. If requested to do so in writing after that date, a party shall, within 15 days of such request, return Confidential Information to the party that produced the Confidential Information, or shall destroy the Confidential Information at the producing party's option. Within such time period a party, if requested to do so, also shall submit to the producing part an affidavit stating that, to the best of its knowledge, all Confidential Information has been returned or destroyed. To the extent that Confidential Information is not returned or destroyed, the Confidential Information shall remain subject to this Agreement.

DATED this 15th day of October, 2002.

By:	Signature	_____
	Name	<u>Jana Van Ness</u>
	Title	<u>Manager, State Regulation</u>
	Date	_____
	Company	<u>Arizona Public Service Company</u>

By:	Signature	_____
	Name	_____
	Title	_____
	Date	_____
	Company	_____

Exhibit A

Confidentiality Certificate

I, _____, by executing this Confidentiality Certificate do hereby certify and agree that:

1. I have reviewed the Protective Agreement, dated _____ between Arizona Public Service Company, and _____ (the "Protective Agreement"), regarding the disclosure of confidential information (the "Confidential Information");
2. I agree to comply with and be bound by the terms and conditions of the Protective Agreement as it pertains to Confidential Information disclosed to me.

Date: _____

Signature _____

Title: _____

Representing: _____

**ARIZONA CORPORATION COMMISSION STAFF'S FIRST SET OF DATA REQUESTS –
October 4, 2002
TO ARIZONA PUBLIC SERVICE COMPANY'S
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR
AN ORDER OR ORDERS AUTHORIZING IT TO ISSUE, INCUR, OR ASSUME EVIDENCES OF
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EXHIBIT B

FINANCING

STAFF 1-1 (MJR)

Please provide a brief history and status report for PWEC's Silver Hawk plant. Specifically, please indicate whether or not PWEC plans to proceed with construction of the Silver Hawk plant. Please explain why PWEC has or has not chosen to proceed with construction of Silver Hawk.

RESPONSE:

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AND TO GUARANTEE THE OBLIGATIONS OF AN AFFILIATE OR AFFILIATES**

STAFF 1-2 (MJR) Please describe the financing arrangements for the Silver Hawk plant.

RESPONSE:

ARIZONA CORPORATION COMMISSION STAFF'S FIRST SET OF DATA REQUESTS –

October 4, 2002

TO ARIZONA PUBLIC SERVICE COMPANY'S

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STAFF 1-3 (MJR)

Please identify whether PWEC currently has or in the past has had any plans to build additional plants. If so, please describe all such plans and their current status.

RESPONSE:

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AND TO GUARANTEE THE OBLIGATIONS OF AN AFFILIATE OR AFFILIATES**

STAFF 1-4 (MJR) Please provide copies of all memoranda, correspondence, or other documents of any kind related to the decision to build Red Hawk and West Phoenix Units 4 & 5.

RESPONSE:

**ARIZONA CORPORATION COMMISSION STAFF'S FIRST SET OF DATA REQUESTS -
October 4, 2002
TO ARIZONA PUBLIC SERVICE COMPANY'S
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR
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AND TO GUARANTEE THE OBLIGATIONS OF AN AFFILIATE OR AFFILIATES**

STAFF 1-5 (MJR) Please provide copies of all memoranda, correspondence, or other documents of any kind related to the decision to transfer PWEC's generation assets to APS.

RESPONSE:

ARIZONA CORPORATION COMMISSION STAFF'S FIRST SET OF DATA REQUESTS –

October 4, 2002

TO ARIZONA PUBLIC SERVICE COMPANY'S

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STAFF 1-6 (MJR)

Please provide copies of all memoranda, correspondence, or other documents of any kind related to the decision not to transfer PWEC's generation assets to APS and to instead pursue the arrangement proposed in APS' current and pending financing application.

RESPONSE:

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AND TO GUARANTEE THE OBLIGATIONS OF AN AFFILIATE OR AFFILIATES**

STAFF 1-7 (MJR)

Please explain who within the Pinnacle West family of companies made the decision to build Red Hawk and West Phoenix Units 4 & 5. In addition, please explain the basis for the decision(s).

RESPONSE:

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STAFF 1-8 (MJR)

Please identify who made the decision to transfer PWEC's generation assets to APS. In addition, please explain the basis for the decision(s).

RESPONSE:

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AND TO GUARANTEE THE OBLIGATIONS OF AN AFFILIATE OR AFFILIATES

STAFF 1-9 (MJR) Please identify who made the decision not to transfer PWEC's generation assets to APS and to instead pursue the arrangement proposed in APS' current and pending financing application. In addition, please explain the basis for the decision(s).

RESPONSE:

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October 4, 2002

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Questions 10-12 apply to Pinnacle West Capital Corp., Arizona Public Service Co., and Pinnacle West Energy Corp:

STAFF 1-10 (JST) Provide copies of all presentations made to all bond rating agency, investment house investment banks, and banks for the years 2000 to present.

RESPONSE:

**ARIZONA CORPORATION COMMISSION STAFF'S FIRST SET OF DATA REQUESTS –
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AN AFFILIATE OR AFFILIATES; TO LEND MONEY TO AN AFFILIATE OR AFFILIATES;
AND TO GUARANTEE THE OBLIGATIONS OF AN AFFILIATE OR AFFILIATES**

STAFF 1-12 (JST) Provide copies of all rating agency reports in the Company's possession.

RESPONSE:

ARIZONA CORPORATION COMMISSION STAFF'S FIRST SET OF DATA REQUESTS –

October 4, 2002

TO ARIZONA PUBLIC SERVICE COMPANY'S

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

STAFF 1-13 (JST) Provide copies of all correspondence with bond rating agencies for the years 2000 to present.

RESPONSE:

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

EXHIBIT C

STAFF'S FIRST SET OF DATA REQUESTS
TO ARIZONA PUBLIC SERVICE IN
Docket Nos. E-00000A-02-0051, E-01345A-01-0822,
E-00000A-01-630, E-01933A-02-0069 (TRACK B)

and

STAFF'S SECOND SET OF DATA REQUESTS
TO ARIZONA PUBLIC SERVICE IN
Docket No. E-01345A-02-0707

October 15, 2002

- MR 1.1 Please provide all forecasts of APS' total *retail* load capacity and energy for the following years: 2003, 2004, 2005, 2006, and 2007. For each forecast provided, please describe the purpose for which it was prepared, its strengths and weaknesses, and the degree of reliance that APS has placed upon it.
- MR 1.2 Please specify whether there is an "official" forecast(s), i.e., one which APS uses for any formal purpose. If so, please identify it and describe its use. If there are more than one, please identify and describe each.
- MR 1.3 Please list each rate-based plant that APS uses to serve its retail load. For each plant listed, please specify the plant's capacity and capacity factor.
- MR 1.4 Please list each contract under which APS obtains capacity and energy to serve its retail load. For each contract listed, please specify the contract's capacity and energy or load factor and the date it was entered into.
- MR 1.5 Please identify APS' forecasted unmet needs, i.e., the difference between forecasted load and capacity and associated unmet energy needs, for the years 2003, 2004, 2005, 2006, and 2007. Please identify the specific forecast used to determine your response, and please explain why that forecast was selected. For the purposes of this question, capacity and energy refers to rate-based generation assets and contracts to purchase power entered into before September 1, 2002.

DICKSTEIN SHAPIRO MORIN & OSHINSKY L L P

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: (202) 955-6676

E-Mail Address: EnglemanM@dsmo.com

EXHIBIT D

October 16, 2002

Mr. Jeffrey B. Guldner, Esq.
Snell & Wilmer
400 East Van Buren
One Arizona Center
Phoenix, Arizona 85004-2202

Re: **APS's Application For a Financing Order; Docket No. E-01345A-02-0707**
First Set of Data Requests from Panda Gila River, L.P.

Dear Mr. Guldner,

Attached please find the First Set of Data Requests from Panda Gila River, L.P. ("PGR") to Arizona Public Service Company ("APS") in the above-referenced matter. Please provide a copy of APS's responses to each of the following individuals:

Jay L. Shapiro
Fennemore Craig, P.C.
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012
Facsimile: (602) 916-5999
jshapiro@FCLAW.com

Michael R. Engleman
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037
(202) 95-6676
Facsimile: (202) 887-0689
Englemanm@dsmo.com

We are in the process of reviewing the testimony submitted by APS on Friday and will forward additional Data Requests related to that testimony as soon as practicable. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Larry F. Eisenstat
Michael R. Engleman
Frederick D. Ochsenhirt
Dickstein Shapiro Morin & Oshinsky LLP
Attorneys for TPS GP, Inc.

Jay L. Shapiro
Patrick Black

PANDA GILA RIVER L.P.'S FIRST SET OF
DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY
(Docket No. E-01345A-02-0707)

Fennemore Craig, P.C
Attorneys for Panda Gila River, L.P.

Attachment

PANDA GILA RIVER L.P.'S FIRST SET OF
DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY
(Docket No. E-01345A-02-0707)

I. INSTRUCTIONS AND DEFINITIONS

A. Instructions

1. These Data Requests and Document Production Requests call for all information, including information contained in documents or stored on computer disks or in computers, which relate to the subject matter of the Data Requests and that is known or available to you.

2. If the Request calls for documents or other information that were originally provided in electronic format, provide the documents or other information in electronic format by electronic mail and/or on clearly-labeled computer diskettes or CD-ROMs.

3. In answering these Requests, Respondent is requested to furnish such information as is available to Respondent, including information that Respondent is able to obtain by due diligence from Respondent's present or former employees, accountants, investigators, consultants, witnesses, agents, or other persons acting on Respondent's behalf.

4. Where a Data Request has a number of separate subdivisions or related parts or portions, a complete response is required to each such subdivision, part, or portion. Any objection to a Data Request should clearly indicate the subdivision, part, or portion of the Data Request to which it is directed.

5. If a Data Request specifically requests an answer in response rather than the production of documents, an answer is required. The production of documents will not suffice.

6. These Data Requests are continuing in nature and require supplemental responses when further or different information with respect to the same is obtained.

7. Each response should be furnished on a separate page headed by the individual Data Request being answered. Individual responses of more than one page should be stapled or bound and each page consecutively numbered.

8. For each document produced or identified in a response to a Document Production Request that is computer generated, state separately: (a) what types of data, files, or tapes are included in the input and the source thereof; (b) the form of the data that constitutes machine input (e.g., punch cards, tapes); (c) a description of the recordation system employed (including program descriptions, flow charts, etc.); and (d) the identity of the person who was in charge of the collection of input materials, the processing of input materials, the data bases utilized, and the programming to obtain the output.

PANDA GILA RIVER L.P.'S FIRST SET OF
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9. If a Data Request can be answered in whole or in part by reference to the response to another Data Request served in this proceeding, it is sufficient to so indicate by specifying the other Data Request by participant and number, by specifying the parts of the other response that are responsive, and by specifying whether the response to the other Data Request is a full or partial response to the instant Data Request. If it constitutes a partial response, the balance of the instant Data Request must be answered.

10. If you cannot answer a Data Request in full after exercising due diligence to secure the information necessary to do so, state the answer to the extent possible, state why you cannot answer the Data Request in full, and state what information or knowledge you have concerning the unanswered portions.

11. If, in answering any of these Data Requests, you feel that any Data Request or definition or instruction applicable thereto is ambiguous, set forth the language you feel is ambiguous and the interpretation you are using in responding to the Data Request.

12. If a document requested is unavailable, identify the document, describe in detail the reasons the document is unavailable, state where the document can be obtained, and specify the number of pages it contains.

13. If you assert that any document has been destroyed, state when and why it was destroyed, and identify the person who directed the destruction. If the document was destroyed pursuant to your document destruction program, identify and produce a copy of the guideline, policy or company manual describing such document destruction program.

14. If you refuse to respond to any Data Request by reason of a claim of privilege or for any other reason, state in writing the type of privilege claimed and the facts and circumstances you rely upon to support the claim of privilege or the reason for refusing to respond. With respect to requests for documents to which you refuse to respond, identify each such document, and specify the number of pages it contains.

15. If no document is responsive to a Data Request that calls for a document, then so state. In each instance, the Data Request should be treated as an interrogatory.

B. Definitions

1. The words "and" and "or" should be construed either conjunctively or disjunctively as necessary to include information within the scope of a Request, rather than to exclude information therefrom.

2. "ACC" means the Arizona Corporation Commission and is used interchangeably with "Commission."

PANDA GILA RIVER L.P.'S FIRST SET OF
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3. An "Affiliate" with regard to any person means another person which controls, is controlled by, or is under common control with, such person.

4. "APS" means Arizona Public Service Company, its employees, agents, consultants, representatives, attorneys, officers, Directors, and any other person acting on behalf of APS.

5. "Control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a presumption of control.

6. The term "correspondence" should be interpreted to include, but not be limited to, all letters, telexes, facsimiles, telegrams, notices, messages, memoranda, e-mail communications and attachments, and other written or electronic or computer generated communications.

7. "Document" means

a. "Documents" refers to all writings and records of every type in your possession, control, or custody, including but not limited to: e-mail communications, PowerPoint presentations, testimony, exhibits, memoranda, correspondence, letters, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data, computer files, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets, work papers, engineering diagrams (including "one-line" diagrams), mechanical and electrical recordings, records of telephone and telegraphic communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above.

b. "Document" includes copies of documents, where the originals are not in your possession, custody, or control.

c. "Document" includes every copy of a document that contains handwritten or other notations or that otherwise does not duplicate the original or any other copy.

8. "Document" also includes any attachments or appendices to any document.

9. "Identify" when used in referring to a person, shall mean to state the following with regard to the person: (a) name; (b) last known address; (c) residence and business telephone numbers; (d) relationship to you; and (e) occupation at the date of these interrogatories.

PANDA GILA RIVER L.P.'S FIRST SET OF
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10. The terms "identify" and "identity" with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and its present custodian. If any such document was in APS's possession or subject to its control, but is no longer, state what disposition was made of it and explain the circumstances surrounding, and the authorization for, such disposition, and state the date or approximate date of such disposition.

11. "Person" means, without limiting the generality of its meaning, every natural person, corporation, partnership, association (whether formally organized or ad hoc), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or other organization.

12. The words "and" and "or" should be construed either conjunctively or disjunctively as necessary to include information within the scope of a Request, rather than to exclude information therefrom

13. The words "power," "energy," and "electricity" shall be constructed to include, but not be limited to, capacity, energy, ancillary services, and losses. Provide all information in MWs.

14. "PWEC" means Pinnacle West Energy Corporation, its employees, agents, consultants, representatives, attorneys, officers, Directors, and any other person acting on behalf of PWEC.

15. "PWCC" means Pinnacle West Capital Corporation, its employees, agents, consultants, representatives, attorneys, officers, Directors, and any other person acting on behalf of PWCC.

16. The terms "related" or "related to" should be interpreted to include every document describing, discussing, analyzing, referring to, associated with, or bearing a relationship to the subject matter of the Request. A document is "related to" a certain subject matter if the subject matter is described, discussed, or referenced at any place in the document and even if the subject matter is not a major focus on the document.

17. "Financing Application" and "Application" refers to the September 16, 2002, Application filed by APS requesting the ACC to allow APS to borrow up to \$500 million and to lend the proceeds to PWEC; to guarantee up to \$500 million of PWEC's debt; or a combination of both, not to exceed \$500 million in the aggregate, and various other relief..

18. The term "PWEC Assets" refers to West Phoenix CC Units 4 and 5, Redhawk Units 1 and 2, and Saguaro CT Unit 3.

PANDA GILA RIVER L.P.'S FIRST SET OF
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II. DATA REQUESTS

1. Provide any and all documents evidencing the “costs incurred by Pinnacle West Capital Corporation (“Pinnacle West”) and Pinnacle West Energy Corporation (“PWEC”) in the financing of PWEC’s construction” of the PWEC Assets as referenced on page 1 of the Application. Provide any and all documents evidencing the financing, whether internal between Pinnacle West affiliates or subsidiaries or external, of the PWEC Assets.

2. State with specificity the basis for the assertion on page 1 of your Application that the “Recapitalization Debt” should not be treated as Continuing Debt.

3. State with specificity the basis for the assertion on page 2 of your Application that the APS Guarantees should not be treated as Continuing Debt.

4. On page 2 of your Application, you state that the “Application is filed to address the serious and unique financial harm faced by APS, PWEC and Pinnacle West as a result of the Commission’s “reversal of course” on the issue of APS generation asset divestiture.” With respect to this assertion provide the following information:

- a. State with specificity, including an estimated dollar figure, each and every element of financial harm or damages APS asserts is faced or has been suffered by APS as a result of the Commission’s decision not to allow divestiture of APS generation to PWEC.
- b. State with specificity how the financial harm or damages faced or incurred by APS will be mitigated or reduced by the Commission’s approval of the Application.
- c. State with specificity, including an estimated dollar figure, each and every element of financial harm or damages APS asserts is faced or has been suffered by PWCC as a result of the Commission’s decision not to allow divestiture of APS generation to PWEC.
- d. State with specificity, including an estimated dollar figure, each and every element of financial harm or damages APS asserts is faced or has been suffered by PWEC as a result of the Commission’s decision not to allow divestiture of APS generation to PWEC.

5. State with specificity the place or places that the Settlement Agreement reflects the “Commission’s promise to provide a common

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financial and regulatory regime for all of the combined generation of APS and PWEC” as asserted on page 3 of the APS Application.

- a. With respect to APS’s assertion state with specificity what APS means by a “common financial” regime.
 - b. With respect to APS’s assertion state with specificity what APS means by a common “regulatory” regime.
 - c. Identify the Commission decision, rule or order which required that all generating units, whether previously owned by APS or not, be owned by the same PWCC entity or affiliate following divestiture.
 - d. Provide any and all documents that evidence in any way the decision not to finance the construction of generation facilities, including but not limited to any and all studies supporting your decision.
6. At the time the Settlement Agreement was entered, what generation was owned, announced, under construction or anticipated by PWCC or PWEC? With respect to such generation, provide the following information:
- a. the date such generation was first proposed;
 - b. the date such generation was first publicly announced;
 - c. copies of any and all press releases related to the announcement;
 - d. whether the generation project was announced with a business partner;
 - e. copies of all agreements reflecting the financial arrangements among the business partners for financing the project(s);
 - f. the identity of the Pinnacle West entity announced as the owner of the generation.
7. On page 3 of your Application you state that “with Decision No. 65154, the long-anticipated regulatory regime of unregulated generation competition is no longer possible.” With respect to this assertion, state with specificity the basis for your assertion that unregulated generation competition is no longer possible, including what you mean by the phrase “unregulated generation competition.”

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As part of your answer state how the competitive standing of PWEC generation is changed by Decision No. 65154.

8. On page 3 of your Application you state that “[t]raditional cost-of-service regulation, or an acceptable surrogate for such unregulated competition, must now be substituted as that common regulatory regime.” With respect to this assertion provide the following information:
 - a. State how cost-of-service regulation acts as a substitute for the unregulated competition referenced in your assertion.
 - b. State how the financing application would provide traditional cost-of-service regulation for PWEC Assets.
 - c. In your view, what are the other “acceptable surrogate[s] for such unregulated competition.” What has APS done to evaluate those alternatives in comparison to the Application with regard to ratepayer risk and benefit. Provide any and all such analyses.
 - d. State with specificity the benefits that would be provided APS customers by a common regulatory regime for APS and PWEC owned generation.
 - e. State with specificity the benefits that would be provided to APS customers by “traditional cost-of-service” regulation for the PWEC Assets.
9. On page 3 of the Application you state that “the Company must now find a financial remedy rather than a structural remedy—one that will permit the PWEC Assets to remain at PWEC until the Commission determines the final rate treatment of the PWEC Assets.” In the absence the financial options contemplated by the Application, what prevents the PWEC assets from remaining at PWEC before the Commission determines the final rate treatment of the PWEC Assets? When and how does APS propose the Commission determine the final rate treatment of the PWEC Assets? On what basis does APS assert that the rate treatment of the PWEC Assets is a Commission issue rather than a Federal Energy Regulatory Commission issue.
10. On page 4 of your Application, you assert that “APS also was aware that a start-up, stand-alone generation company would lack the initial cash flow necessary to support the investment- grade financing needed to be fully competitive in the market.” With respect to this assertion, state or provide the following:

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- a. The basis for your assertion that investment grade financing is necessary to be fully competitive in the market.
 - b. What market is referred to in the assertion?
 - c. What does APS mean by use of the word "fully" in the context of this assertion?
 - d. Provide all documents in APS's possession reflecting APS's "awareness" as asserted in the quoted phrase.
 - e. In your assertion, with whom was APS expecting the generation to compete? Provide all documents supporting your answer.
 - f. In your assertion, identify with specificity the amount of "the initial cash flow necessary to support" investment grade financing.
 - g. If the PWEC Assets won a competitive solicitation to provide capacity and energy to APS for one year, would that provide the needed cash flow? Three years? Five years?
11. On page 4 of the Application you assert that "APS was only willing to agree to the 1999 Settlement on terms that allowed all APS-owned generation and anticipated future generation to enjoy an investment-grade rating." With respect to this assertion, provide the following:
- a. Identify all "anticipated future generation" known to APS at the time APS entered into the 1999 Settlement. Provide any and all documents supporting your answer.
 - b. Provide any and all documents which support your assertion that APS would only agree to the settlement on terms that allowed APS-owned generation and future generation to enjoy an investment grade rating.
 - c. When you refer to anticipated future generation, is it APS's position that this qualification would apply into infinity? If your answer is no, what was the cutoff for future generation which was to be included in the investment grade rating qualification to settlement.
 - d. Did APS advise either the Commission or Commission Staff that it was only willing to agree to the 1999 Settlement on terms that allowed all APS-owned generation and anticipated future generation to enjoy an investment-grade rating? If your

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answer is anything other than an unqualified no, provide any and all information and documents that support your assertion that you advised the Commission or Commission Staff.

- e. Is it APS's assertion that the only way for the PWEC Assets to have enjoyed or to enjoy an investment-grade rating was/is to be financially bound to APS generation assets.
 - f. Identify each meeting, whether in person or by telephone, between an officer of APS, Pinnacle West and/or PWEC and a Commissioner of the ACC or his Staff, or an employee of the ACC between the date of the Settlement Agreement and the present, and for each such meeting identify the following:
 - i. The date of the meeting;
 - ii. The identity of each APS, Pinnacle West or PWEC Officer or employee participating;
 - iii. The identity of each Commissioner of the ACC or his Staff, or employee of the ACC participating;
 - iv. Whether the meeting was initiated by APS, Pinnacle West, PWEC or the Commission;
 - v. The subject matter of the meeting;
 - vi. Whether the subject of the PWEC Assets was discussed in any regard;
 - vii. Whether the financial condition of APS, Pinnacle West or PWEC was discussed in any regard;
 - viii. Whether any notes were made of the meeting. If yes, provide copies of all such notes.
12. On page 4 of your Application you state "the impact of Decision No. 65154 on PWEC is both inequitable and dramatic." With respect to this assertion, state the following:
- a. Was PWEC a party to the 1999 Settlement?
 - b. Was PWCC a party to the 1999 Settlement?
 - c. Has PWEC been an intervenor any of the dockets addressing the Electric Competition Rules?

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- d. When did PWEC first become aware that the Commission deliberations in any of the dockets captioned in Decision No. 65154?
 - e. Identify each and every effort made by PWEC to protect its claimed interest in the 1999 Settlement, both before the date referred to in answer to question 12 subpart d and thereafter.
 - f. Identify each and every effort made by PWCC to protect the claimed interest of PWEC in the 1999 Settlement, both before the date referred to in answer to question 9 subpart d and thereafter.
 - g. In seeking to protect its claimed interest in the 1999 settlement, has PWEC paid any of the legal fees of APS in any of the dockets referenced in Decision No. 65154?
 - h. In seeking to protect the claimed interest of PWEC in the 1999 Settlement, has PWCC paid any of the legal fees of APS in any of the dockets referenced in Decision No. 65154?
13. On page 4 of the Application you assert "PWEC had an investment grade debt rating once divestiture was complete." With respect to this assertion, provide any and all information provided to Fitch in obtaining this rating.
14. On page 4 of the Application you state "[w]ith no divestiture, or no prospect of a long-term purchase power agreement such as APS proposed last fall in substitution for full market dependence, PWEC is simply not sufficiently creditworthy under present market conditions absent credit support from APS." With respect to this assertion, provide the following:
- a. Is it APS's contention that PWEC has no prospect of a "long-term purchase power agreement" under the competitive procurement as currently contemplated by Staff's solicitation proposal in the Track B proceeding?
 - b. Is it APS's contention that long term purchase power agreements are good for both merchant generation and APS?
 - c. What is the length of purchase power agreement referred to as "long-term" in your assertion?
 - d. What is meant by "full market dependence" in the assertion?

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- e. With respect to APS's assertion that PWEC is "simply not sufficiently creditworthy" state for what business purpose it is that APS is asserting that PWEC is not sufficiently creditworthy.
 - f. Is it APS's position that it should provide credit support for all unregulated affiliates that are not sufficiently creditworthy for their business purposes?
15. On page 4 and 5 of the Application APS asserts "[u]nder the best of market conditions, a start-up merchant generator with only some 2000 megawatts of localized, uncommitted, gas-fired generation would not have the investment grade rating needed to compete with investment-grade companies." With respect to this assertion, provide the following:
- a. Which investment-grade companies was APS referring in this assertion to as companies with whom the generation would compete?
 - b. State with specificity each and every factor that APS asserts makes non-investment grade generation less competitive than investment grade generation.
 - c. State with specificity each and every benefit APS asserts its customers receive if its non-regulated affiliate has an investment grade credit rating.
 - d. Is APS willing to provide credit support of other merchant generation to allow it to achieve an investment-grade credit rating and would providing such credit support provide the same benefits to APS customers as referenced in your answer to subpart c?
 - e. Is it APS's position that the ACC contractually promised through the 1999 Settlement to provide PWEC with an investment grade credit rating.
16. On page 5 of the Application you assert "[b]eing non-investment grade means more than just being unable to raise capital in a bad market (such as today) or doing so at significantly higher cost in good markets; it directly impacts the ongoing competitiveness of the enterprise." With respect to this assertion, provide the following:
- a. What entities is APS referring to as the "enterprise" in this assertion?

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- b. Is it APS's assertion that the PWEC Assets being non-investment grade would have an impact on the competitiveness of APS? If yes, state the areas in which APS expects to compete and how its competitiveness is impacted.
 - c. Provide any and all analysis or studies performed by APS, PWCC or PWEC that reflect the anticipated dispatch curve position of the PWEC assets with and without investment grade financing or which you allege support your assertion that the PWEC Assets would be less competitive if the Commission denies the Application.
17. On page 5 of the Application you assert that "Pinnacle West was compelled to provide interim bridge financing for the construction of the PWEC assets." With regard to this assertion, provide the following:
- a. Any and all documents supporting your assertion that Pinnacle West was "compelled" to provide interim bridge financing for the construction of the PWEC assets.
 - b. State with specificity each and every alternative financing arrangement Pinnacle West or PWEC evaluated for financing construction of the PWEC Assets prior to executing the interim bridge financing.
 - c. Provide copies of all documentation of the interim bridge financing for the construction of the PWEC Assets.
18. On pages 5 and 6 of the Application you assert "[p]roject specific financing—a far more expensive option for PWEC even under good market conditions and one that would have made the PWEC Assets non-competitive—is simply unavailable to PWEC under today's market conditions." With respect to this assertion, provide the following:
- a. The basis for your assertion that project specific financing is unavailable to PWEC under today's market conditions and identify each and every potential financial provider PWEC solicited, and the date of such solicitation, in determining that project specific finance was unavailable.
 - b. Identify specifically when APS asserts that project specific financing became unavailable to PWEC as a result of market conditions.

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- c. Identify with as much specificity as was known to APS at the time it filed its Application, each and every difference between project specific financing and financing available to an investment grade entity which APS asserts plays a factor in making entities with project specific financing less competitive.
 - d. With respect to the assertion that project specific financing “would have made the PWEC Assets non-competitive,” provide the following:
 - i. Any and all analysis or studies performed by APS, Pinnacle West or PWEC or anyone acting on their behalf that evidence or support your assertion that project specific financing would have made the PWEC Assets non-competitive.
 - ii. The change in price of 1 MW of energy from each individual PWEC Asset and a separate calculation for the PWEC assets collectively (assuming all costs are reflected in the energy price) as a result of obtaining project specific financing rather than financing available to an investment-grade entity.
 - iii. What risks, if any, would inure to APS customers as a result of PWEC obtaining project specific financing.
 - e. To the extent not otherwise identified in subpart A to this Data Request, identify all efforts made by PWEC to obtain project specific or any other financing to finance the PWEC assets.
19. On page 6 of the Application you assert that “[g]iven its debt burden and with no prospect of APS generation divestiture to PWEC, Pinnacle West’s ability to refinance the aforementioned bridge financing of the PWEC Assets, on even a short-term basis and without a credit downgrading, is in serious question.” With respect to this assertion, provide the following:
- a. Identify each and every potential financing provider Pinnacle West has approached to refinance the bridge financing and the specific terms offered by that potential financing provider.
 - b. For each such financing proposal referenced in your answer to 19 a, state the credit rating expected for Pinnacle West if the referenced financing proposal were undertaken.

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20. From the inception of PWEC to the present, has APS provided any financial support to PWEC in any form?
 - a. If yes, identify the reason for the support, the dates of specific transactions and any and all documents evidencing the financial transactions.
21. On page 6, lines 6 - 10 of the Application you make various assertions regarding the monetary impacts of certain credit rating downgrades. With respect to these assertions provide any and all documents which you allege support your assertions. State the date referred to by the reference to "historical" on line 7.
22. On page 6 of the Application you assert that it is "dangerous to assume that APS could remain wholly unaffected by these events." With regard to this assertion, provide the following:
 - a. All analysis or studies conducted by APS identifying the impact on APS of any credit rating drop of Pinnacle West.
 - b. All analysis or studies conducted by APS identifying the impact on APS of a PWEC or PWCC bankruptcy.
 - c. Has APS requested that any rating agency rate APS separately from Pinnacle West?
 - d. Describe in detail all steps taken by APS to insulate itself from financial impacts as a result of operations of Pinnacle West or PWEC.
 - e. Any and all analysis reflecting the assertion that a significant regulatory risk premium would undoubtedly be added to APS's cost of obtaining capital.
 - f. If the Commission grants APS's Application, will APS's credit rating then be inextricably intertwined with the credit ratings of its unregulated parent and affiliate.
23. On page 6 and 7 of the Application, in footnote 8, you assert that the PPA between APS and Pinnacle West would be more advantageous to APS customers than the financing alternatives requested in the Application. With respect to this assertion, provide the following:
 - a. Copies of any and all analysis conducted by APS which reflect the advantages or disadvantages of the PPA relative to the Application.

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- b. Identify each and every way in which APS asserts that the financing is inferior to the previously proposed PPA.
 - c. If the Commission had approved the PPA, even without the divestiture of APS generation to PWEC, would APS, PWCC or PWEC have suffered the financial harm referenced in the Application.
24. On page 6 and 7 of the Application you assert that the Application “satisfies the stated desire of some of the parties to maintain separation between APS’ regulated assets and PWEC Assets.” With Respect to this assertion, provide the following:
- a. Is it APS’s position that a loan between APS and PWEC or Pinnacle West maintains separation between APS and the PWEC Assets? If your answer is yes provide any and all information or documents you allege support your assertion.
 - b. What “parties” is APS referring to in the assertion?
 - c. Did APS inquire of any such parties whether the party or parties considered the Application to satisfy “the stated desire . . . to maintain separation between APS’ regulated assets and PWEC Assets.” If yes, identify the party, the date of inquiry and the response received by APS.
25. On page 8 of the Application you assert that PWEC “is principally engaged in the generation of electric power for sale to APS at wholesale . . .” With respect to this assertion, provide the following:
- a. The Articles of Incorporation and bylaws of PWEC;
 - b. Any and all documents which you assert support your assertion that PWEC is “principally engaged in the generation of electric power for sale to APS at wholesale.”
 - c. Identify each and every entity to whom PWEC has bid to supply power since its inception.
 - d. Identify each and every entity to whom the PWEC Assets provided energy, either directly or indirectly, since construction and provide any and all contracts supporting such transactions..
 - e. Provide all press releases related to the formation of PWEC.

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- f. Provide copies of any and all mission statements for PWEC, whether created by PWEC, Pinnacle West or another entity, since the inception of PWEC.
 - g. Provide any and all documents provided to any stock or credit rating agency since the inception of PWEC which reflect the principal purpose of PWEC.
 - h. Provide all documents of whatever type, that relate to, in any manner, the creation of PWEC, including but not limited to any notes, studies, reports, PowerPoint or other presentations, analysis, etc., presented to: (a) Employees of APS, PWCC or PWEC; (b) Directors of APS, PWCC or PWEC (c) Consultants or contractors of PWEC; and/or (d) financial or stock rating agencies.
26. To the extent not previously provided in response to these requests, provide copies of any and all documents relating the Pinnacle West's incurring \$635,000,000 in primary short-dated debt as asserted on page 8 of the Application, including but not limited to documents evidencing the indebtedness.
27. State with specificity each and every cost item that will cause the bridge debt to increase to \$765,000,000 by the middle of 2003 as asserted on page 8 of the Application.
28. On page 5, you state that "[i]n a very real sense, it was the 1999 Settlement that Wall Street accepted as collateral for Pinnacle West's bridge financing."
- a. What does APS mean by use of the word Wall Street?
 - b. What is the collateral that was accepted and who accepted it?
 - c. Provide any and all documents that evidence a factual basis for this statement.
29. Has APS, PWCC or PWEC analyzed the propriety of canceling or postponing the actions identified in answer to Data Request 27 as adding to the bridge debt in 2003? If yes, provide a copy of any such analysis.
30. On page 10 of the Application, APS asks that the "Commission maintain the current margin under the Continuing Debt limit by finding that the Recapitalization Debt . . . should not be classified or treated as Continuing Debt as set forth in the 1984 and 1986 Orders." With regard to this request, provide the following:

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- a. Does APS agree that the Recapitalization Debt as defined in the Application would fall within the definition of Continuing Debt reflected in the 1984 and 1986 Orders.
 - b. If your answer to 30 (a) is yes,
 - i. state the basis upon which you request that the Commission not classify the debt as Continuing Debt.
 - ii. Is it APS's position that the Commission can simply disregard the definition contained in the 1984 and 1986 Orders without affirmatively revising APS's debt authorizations?
 - c. If your answer to 30 (a) is no, state with specificity the basis for your assertion that the Recapitalization Debt is excluded from the definition of Continuing Debt contained in the 1984 and 1986 Orders.
31. On page 12 of the Application APS asserts that the "proceeds from the issuance of the Recapitalization Debt would be loaned by APS to PWEC in exchange for a note or notes . . ." Provide a copy of the form of note to be used by APS for the PWEC or Pinnacle West loan.
32. On page 12 of the Application you assert that the proposed capital infusion from Pinnacle West in the approximate amount of \$532,000,000 may take the form of cash or property, forgiveness of indebtedness, internal generation of funds at PWEC or a combination of the above. With regard to this assertion, provide any and all document that evidence the expected source of any of these funds, including but not limited to income projections.
33. On page 12 and 13 of the Application APS requests ACC approval of the right to guarantee indebtedness of PWEC. With respect to this request, provide the form of guarantee to be used and a copy of the "reimbursement agreement" referenced on lines 7 and 8 of page 13.
34. On page 13 you assert that "Pinnacle West is presently carrying more debt than its own capitalization and income could support under the ratings criteria established by national ratings agencies . . ." With regard to this assertion, provide the following:
- a. Any and all documents supporting the assertion.
 - b. State with specificity the forms of other debt carried by Pinnacle West other than debt incurred for the construction of the PWEC Assets.

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- c. Provide the debt maturity schedules for public and private debt and bank loans for APS, Pinnacle West and PWEC
35. To the extent not previously provided, provide all documents which support the assertion of numerical paragraph 22 on page 13 of the Application.
36. On Page 14 of the Application you state, “without permanent financing in place and with no potential to obtain financing on commercially reasonable terms, if at all, PWEC cannot effectively compete in the competitive wholesale market under the present credit constraints in that market.” Provide the following with regard to this assertion:
- a. State with specificity the why APS feels that this financing plan will make PWEC more competitive than under alternative arrangements.
 - b. State with specificity what APS means by “commercially reasonable terms.”
 - c. State with specificity what APS means by the “current credit constraints” when referring to the competitive wholesale market.
 - d. State with specificity why APS is concerned about the ability of PWEC to effectively compete in the wholesale market.
 - e. Your statements in this assertion and others reflects or infers knowledge by APS of the competitive status of an unregulated, merchant generation affiliate. State with specificity how APS acquired such knowledge, including the following information:
 - i. Each person within APS who has knowledge of the competitive position of PWEC;
 - ii. All information known by APS relating to the competitive position of PWEC;
 - iii. Provide copies of all documents in the files of APS reflecting the competitive position of PWEC, including but not limited to cost data;
 - iv. Identify each and every meeting held between Officers or employees of APS and Officers and employees of PWEC or PWCC during which the competitiveness of PWEC was discussed and provide a list of employees

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present, their affiliation and job title and copies of any and all notes made at the meeting.

37. Provide any and all documents that evidence what analysis and methodology was used to produce Exhibit F, and explain how APS can accommodate the increased debt authorizations sought by the Application without a loss of APS's overall credit quality or debt rating.
 - a. Explain why such debt would have an immaterial effect on APS's cost of capital.
 - b. Provide all supporting documentation and methodology.
38. Has APS performed an analysis on the estimated impact the financing plans proposed in the Application would have on retail and wholesale competition in the State of Arizona?
 - a. If yes, state with specificity what impact this proposed financing plan would have on the retail and wholesale competition in the State of Arizona.
 - b. Provide any and all documents that evidence any internal or external studies conducted regarding the impact of this proposed financing plan on electric competition.
39. Has APS performed an analysis on the estimated impact that the proposed financing plans, as identified in the Application, would have on retail rates in the State of Arizona following the end of the rate freeze?
 - a. If yes, state with specificity the impact this proposed financing plan would have on the ratepayers of Arizona.
 - b. Provide any and all documents that evidence any internal or external studies conducted regarding the impact the proposed financing plans, as identified in the Application, would have on retail consumer rates.
40. On page 15 of the Application you identify certain "required" statutory findings under Arizona Revised Statute §§ 40-301 and 302, to this financing Application? Has APS performed any analysis or study supporting the assertions of paragraphs 32 on page 15 of the Application?
 - a. If yes, thoroughly explain the analysis and conclusion, and provide any and all supporting documentation.

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- i. Identify all applicable decisions and legal authority for your position.
- b. With regard to the analysis identified in subpart a., explain thoroughly whether this Application is for a “lawful purpose” and is within your “corporate powers.”
 - i. What was the basis for this determination?
 - ii. What documents or opinions were relied upon to make this determination?
 - iii. Provide any and all documentation supporting this position, to include all applicable decisions and legal authority for your position.
- c. With regard to the analysis identified in subpart a., explain thoroughly how this financing Application is “compatible with the public interest.”
 - i. What criteria did APS use as the basis for this determination?
 - ii. What documents or opinions were relied upon to make this determination?
 - iii. In analyzing whether the financing application was in the public interest identify all alternative plans evaluated.
 - iv. Provide any and all documentation supporting this position, to include all applicable decisions and legal authority for your position.
- d. With regard to the analysis identified in subpart a., explain thoroughly whether this application is within “sound financial practices” as defined by the Commission and under Arizona State law.
 - i. What was the basis for this determination?
 - ii. What documents or opinions were relied upon to make this determination?
 - iii. Provide any and all documentation supporting this position, to include all applicable decisions and legal authority for your position.

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- e. With regard to the analysis identified in subpart a., explain thoroughly how this financing Application is within the “proper performance” of a “public service corporation.”
 - i. What was the basis for this determination?
 - ii. What documents or opinions were relied upon to make this determination?
 - iii. Provide any and all documentation supporting this position, to include all applicable decisions and legal authority to for your position.
41. Has APS performed any kind of analysis concerning the application of Arizona’s Competition Rule R14-2-804 to this financing Application?
- a. If yes, thoroughly explain the analysis and conclusion and provide any and all supporting documentation.
 - b. Identify all applicable decisions and legal authority for this position.
 - c. With regard to the analysis identified in subpart a., explain thoroughly whether this financing Application or “transaction[] would impair” your “financial status?”
 - i. What was the basis for this determination?
 - ii. What documents or opinions were relied upon to make this determination?
 - iii. Provide any and all documentation supporting this position, to include all applicable decisions and legal authority for your position.
 - d. With regard to the analysis identified in subpart a., explain thoroughly whether this financing Application will “prevent [you] from attracting capital at fair and reasonable terms.”
 - i. What was the basis for this determination?
 - ii. What documents or opinions were relied upon to make this determination?

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- iii. Provide any and all documentation supporting this position, to include all applicable decisions and legal authority for your position.
 - e. With regard to the analysis identified in subpart a., explain thoroughly whether this financing Application will "impair [your] ability ... to provide safe, reasonable and adequate service."
 - i. What was the basis for this determination?
 - ii. What documents or opinions were relied upon to make this determination?
 - iii. Provide any and all documentation supporting this position, to include all applicable decisions and legal authority for your position.
- 42. On page 13 you reference the "ratings criteria established by national rating agencies such as S&P, Moody's and Fitch." With respect to each such agency, and any other debt or stock rating agency, provide a copy of all information to provided to such agencies between 1998 and the present.
- 43. On page 14 of the Application you reference and in Exhibit D to the Application provide APS's most current public financial statements. Please provide any and all Financial statements for APS, Pinnacle West and PWEC (if available) for the 1st through 3rd quarters 2002, the full years of 2000 and 2001 including footnotes, full balance sheet, income statement, cash flow statement and publicly available projections, if any.

1 **EXHIBIT E**

2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3
4 **WILLIAM A. MUNDELL**

5 **Chairman**

6 **JIM IRVIN**

7 **Commissioner**

8 **MARC SPITZER**

9 **Commissioner**

10 **IN THE MATTER OF THE APPLICATION OF**
11 **ARIZONA PUBLIC SERVICE COMPANY FOR AN**
12 **ORDER OR ORDERS AUTHORIZING IT TO ISSUE,**
13 **INCUR, OR ASSUME EVIDENCES OF LONG-**
14 **TERM INDEBTEDNESS; TO ACQUIRE A**
15 **FINANCIAL INTEREST OR INTERESTS IN AN**
16 **AN AFFILIATE OR AFFILIATES; TO LEND**
17 **MONEY TO AN AFFILIATES OR AFFILIATES;**
18 **AND TO GUARANTEE THE OBLIGATIONS OF AN**
19 **AFFILIATE OR AFFILIATES**

DOCKET NO. E-01345A-02-0707

PROTECTIVE ORDER

20 On October 16, 2002, Arizona Public Service Company ("APS") filed a Motion
21 for a Protective Order in the above-captioned docket. The Motion proposed that a form
22 of Protective Agreement similar to that used by APS and Panda/TECO ("Panda") in
23 Docket No. E-01345A-01-0822 be used for merchant generator intervenors and Tucson
24 Electric Power Company in this proceeding. The Motion also proposed that a form of
25 Protective Agreement similar to a Protective Agreement used by Staff in Docket No. E-
26 01032A-02-0598 be used in this docket for Staff, the Residential Utility Consumers'
Office ("RUCO"), and the Arizona Utility Investors' Association ("AUIA). The Motion
proposed that APS would provide proprietary, confidential, and trade secret information
("Confidential Information") pursuant to these Protective Agreements, but that APS
could redact highly confidential trade secret information that, if disclosed, could provide
an intervenor with a competitive advantage or adversely impact the Track B proceeding.

1 IT IS ORDERED granting APS' Motion subject to the following procedures to
2 address access to Confidential Information that has been redacted by any party to this
3 proceeding: Any party that believes access to redacted information is necessary for the
4 prosecution of their case shall make a request for access to the Administrative Law Judge
5 ("ALJ"), which request may be made telephonically with counsel for the redacting party
6 present. The ALJ will review the redacted information *in camera* and consider arguments
7 by the requesting party as to why limited disclosure of such information is necessary and
8 arguments by the redacting party as to why such limited disclosure is unnecessary and
9 inappropriate. If the ALJ determines that limited access to the redacted information is
10 necessary for the requesting party under the circumstances, access shall be permitted only
11 to a specifically-identified representative of the requesting party that is not involved in
12 energy sales or procurement or in Track B of the Commission's Generic Docket.

13 Access to redacted information by one party shall not alone entitle other parties to
14 access the same information without using the procedures and meeting the standards for
15 such access set forth above. In considering any subsequent requests for limited disclosure
16 of the same redacted material, the ALJ will consider whether the limited access already
17 granted to a party of the same class of intervenors has rendered further limited access to
18 that information unnecessary.

19 DATED this ___ day of October, 2002.

20
21 _____
22 LYN FARMER
23 CHIEF ADMINISTRATIVE LAW JUDGE
24
25
26