



0000047201

28

65796

ORIGINAL  
RECEIVED

2003 NOV 10 P 1:05

AZ CORP COMMISSION  
DOCUMENT CONTROL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

BEFORE THE ARIZONA CORPORATION COMMISSION

- MARC SPITZER  
CHAIRMAN
- WILLIAM A. MUNDELL  
COMMISSIONER
- JEFF HATCH-MILLER  
COMMISSIONER
- MIKE GLEASON  
COMMISSIONER
- KRISTIN K. MAYES  
COMMISSIONER

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

Docket No. E-01345A-03-0437

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.

Docket No. E-01345A-02-0707

Arizona Corporation Commission  
**DOCKETED**

NOV 10 2003

DOCKETED BY	<i>CA</i>
-------------	-----------

**RUCO's RESPONSE TO STAFF'S MOTION TO CONSOLIDATE**

On November 5, 2003, Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") filed a motion to consolidate the preliminary inquiry created by the Commission's Decision No. 65796 in the Arizona Public Service

1 Company's ("APS") financing application (Docket No. E-01345A-02-0707) with APS'  
2 pending rate case (E-01345A-03-0437). RUCO opposes consolidation of the two matters.

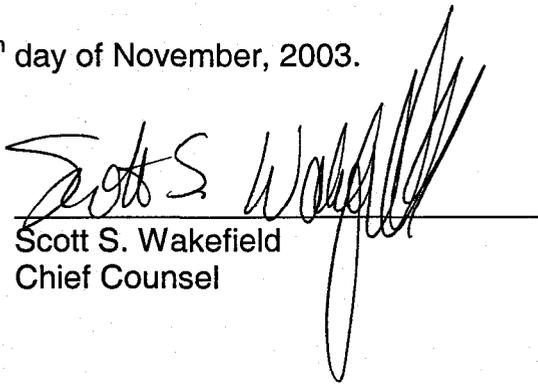
3 Decision No. 65796 ordered Staff to conduct an inquiry into APS' and its affiliates'  
4 compliance with the Electric Competition Rules, Decision No. 61973, APS' Code of  
5 Conduct, and applicable law. Decision No. 65976 at 44. The Commission expressed  
6 concern over testimony in the APS financing hearing regarding Pinnacle West Capital  
7 Corporation's ("PWCC") possible use of APS to "gain advantage in the developing  
8 competitive environment." Decision No. 65976 at 34. Staff's Motion contends that,  
9 because APS argued in both the financing application and in the current rate case that  
10 Pinnacle West Energy Corporation ("PWEC") assets are "dedicated" to APS' customers,  
11 the preliminary inquiry required by Decision No. 65796 should be consolidated into the  
12 APS rate case. Staff states that "much of the same information sought for the preliminary  
13 inquiry will be relevant to the issue of whether the PWEC assets should be included in  
14 APS' rate base." Motion at 2.

15 The determination of whether the PWEC assets should be included in APS' rate  
16 base is sure to be a complex portion of the upcoming rate case. The Commission's  
17 resolution of the matter will depend on both its views of the policy of returning APS to a  
18 vertically integrated utility, and a consideration of the degree to which the PWEC assets  
19 are used and useful to serve APS' native load customers. In contrast, the question before  
20 the Commission in the preliminary inquiry will be the appropriateness of the conduct of  
21 APS and its affiliates in light of the fact that they believed that the PWEC assets were  
22 necessary to meet APS' native load. It is not so much the reasonableness of that belief  
23 that is at issue in the preliminary inquiry, but APS' and its affiliates' conduct based on that  
24

1 belief. In addition, the rate case will look forward to consider the degree to which the  
2 PWEC assets are used and useful to serve APS' load. The preliminary inquiry will be  
3 looking backward, examining APS and its affiliates' conducts of three to four years ago.<sup>1</sup>  
4 The issue in the preliminary inquiry is not "substantially the same" as the issue in the rate  
5 case. See A.A.C. R14-3-109(H).

6 The APS rate case will require the Commission to resolve a host of difficult and  
7 technical matters. There is no efficiency gained by the Commission inserting into that  
8 proceeding the unrelated issue of whether APS and its affiliates acted appropriately in their  
9 past dealings. While the latter question is important, it should be examined separately  
10 from the APS rate case.

11 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of November, 2003.

12  
13  
14   
15 Scott S. Wakefield  
16 Chief Counsel  
17  
18  
19  
20  
21

22 <sup>1</sup> Even if the degree to which PWEC assets may be necessary to meet APS' load is an issue common  
23 to both proceedings, the preliminary inquiry would examine the reasonableness of APS' past belief on that  
24 issue. The rate case evaluation of that question from today's perspective looking forward is a different  
matter.

1 AN ORIGINAL AND FIFTEEN COPIES  
2 of the foregoing filed this 10<sup>th</sup> day  
3 of November, 2003 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered/  
6 mailed this 10<sup>th</sup> day of November, 2003 to:

7 Lyn Farmer, Chief Administrative Law  
8 Judge  
9 Hearing Division  
10 Arizona Corporation Commission  
11 1200 West Washington  
12 Phoenix, Arizona 85007

C. Webb Crockett  
Fennemore Craig  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012

10 Christopher Kempley, Chief Counsel  
11 Legal Division  
12 Arizona Corporation Commission  
13 1200 West Washington  
14 Phoenix, Arizona 85007

Major Allen G. Erickson  
AFCES A/ULT  
139 Barnes Drive  
Suite 1  
Tyndall AFB, Florida 32403

13 Ernest Johnson, Director  
14 Utilities Division  
15 Arizona Corporation Commission  
16 1200 West Washington  
17 Phoenix, Arizona 85007

Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East 7<sup>th</sup> Street  
Suite 2110  
Cincinnati, Ohio 45202

16 Thomas L. Mumaw  
17 Karilee S. Ramaley  
18 Pinnacle West Capital Corp.  
19 Law Department  
20 P.O. Box 53999  
21 Phoenix, Arizona 85072

Walter W. Meek  
AUIA  
2100 North Central Avenue  
Suite 210  
Phoenix, Arizona 85067

20 Jeffrey B. Guldner  
21 Faraz Sanei  
22 Snell & Wilmer L.L.P.  
23 400 East Van Buren Street  
24 Phoenix, Arizona 85004

Nicholas J. Enoch  
Lubin & Enoch  
349 North 4<sup>th</sup> Avenue  
Phoenix, Arizona 85003

Bill Murphy  
Murphy Consulting  
2422 East Palo Verde Drive  
Phoenix, Arizona 85016

1 Jay L. Shapiro  
Patrick J. Black  
2 Fennemore Craig  
3003 North Central Avenue  
3 Suite 2600  
Phoenix, Arizona 85012

4 Robert W. Geake  
5 Arizona Water Company  
P.O. Box 29006  
6 Phoenix, Arizona 85038

7 Andrew W. Bettwy  
Bridget A. Branigan  
8 Southwest Gas Corporation  
5241 Spring Mountain Road  
9 Las Vegas, Nevada 89150

10 Timothy M. Hogan  
Arizona Center for Law  
11 in the Public Interest  
202 East McDowell Road  
12 Suite 153  
Phoenix, Arizona 85004

13 Paul R. Michaud  
14 Martinez & Curtis, P.C.  
2712 North 7<sup>th</sup> Street  
15 Phoenix, Arizona 85006

16 Raymond S. Heyman  
Laura Schoeler  
17 Roshka, Heyman & DeWulf  
400 East Van Buren  
18 Suite 800  
Phoenix, Arizona 85004

19 Deborah R. Scott  
20 UniSource Energy Services  
One South Church Street  
21 Suite 200  
Tucson, Arizona 85702

J. William Moore  
Attorney at Law  
1144 East Jefferson  
Phoenix, Arizona 85034

Eric Guidry  
Western Resource Advocates  
2260 Baseline Road  
Suite 200  
Denver, Colorado 80302

Jana Van Ness  
Arizona Public Service Company  
Mail Station 9905  
P.O. Box 53999  
Phoenix, Arizona 85072-3999

Curtis Kebler  
Reliant Resources, Inc.  
8996 Etiwanda Avenue  
Rancho Cucamonga, CA 91739

Jesse A. Dillon  
PPL  
2 North 9<sup>th</sup> Street  
Allentown, Pennsylvania 18101

Jana Brandt  
Kelly Barr  
Regulatory Affairs and Contracts  
Salt River Project  
Mail Station PAB221  
P.O. Box 52025  
Phoenix, Arizona 85072-2025

Brian Walker  
Reliant Energy Wholesale Group  
P.O. Box 286  
Houston, Texas 77001

Theodore E. Roberts  
Sempra Energy Resources  
101 Ash Street, HQ 12-B  
San Diego, California 92101

1 Lawrence V. Robertson, Jr.  
Munger Chadwick, P.L.C.  
2 National Bank Plaza  
333 North Wilmot  
3 Suite 300  
Tucson, Arizona 85711  
4  
5 Larry F. Eisenstat  
Michael R. Engleman  
Frederick D. Ochsenhirt  
6 Dickstein Shapiro Morin & Oshinsky, LLP  
2102 L Street, N.W.  
7 Washington, D.C. 20037  
8  
9 Jay I Moyes  
Moyes Storey  
3003 North Central Avenue  
Suite 1250  
10 Phoenix, Arizona 85012  
11  
12 Roger K. Ferland  
Quarles & Brady Streich Lang LLP  
Renaissance One  
Two North Central Avenue  
13 Phoenix, Arizona 85004  
14  
15 Greg Patterson  
Arizona Competitive Power Alliance  
5432 East Avalon  
Phoenix, Arizona 85018

16  
17 By   
Jennifer Rumph  
18  
19  
20  
21  
22  
23  
24