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BEFORE THE ARIZONA CORPORATION COMMISSION 11: 24

MARC SPITZER
Chairman

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL

JIM IRVIN
Commissioner

FEB 06 2003

WILLIAM A. MUNDELL
Commissioner

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JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

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

**REPLY BRIEF OF ARIZONANS
FOR ELECTRIC CHOICE AND
COMPETITION**

Arizonans for Electric Choice and Competition ("AECC") hereby submits its
Reply Brief in connection with the above-entitled matter.

I. INTRODUCTION

In its Initial Post-Hearing Brief ("Brief"), Arizona Public Service Company
("APS") concedes that "the Principles of Resolution, like the Application, are part of the
effort undertaken by the Company to *address the results* of the Commission's Track A
Decision." [emphasis added] Brief at p. 15, l. 2-9. Any action by APS and/or the Arizona
Corporation Commission ("Commission") that seeks to address the results of the Track A

1 Decision (Decision No. 65154) by altering, amending or otherwise modifying the Track A
2 Order, or the 1999 APS Settlement Agreement (Decision No. 61973), requires compliance
3 with the provisions of A.R.S. § 40-252.

4 **II. DISCUSSION**

5 One result of the Commission's Track A Decision was to leave untouched the
6 issues of stranded cost recovery and the appropriate treatment of costs incurred by APS in
7 preparation for divestiture.¹ These issues were settled as bargained-for benefits for both
8 residential and commercial ratepayers under Sections II and III of the 1999 APS
9 Settlement Agreement (Decision No. 61973). Nonetheless, the Principles for Resolution
10 between APS and Commission Staff ("Staff") seeks to revisit these issues, as set forth in
11 paragraphs 3 and 4 of the Resolution Agreement.

12 Although APS continues to argue that the issues of stranded cost recovery and
13 treatment of costs incurred in preparation for divestiture are inextricably linked to the
14 issue of divestiture, the Commission has yet to agree, and in fact expressly rejected this
15 position in the Track A Decision (Decision No. 65154).

16 "Neither the Commission nor any party to this proceeding
17 anticipated the current state of electric competition nor caused
18 the problems that have been identified. Therefore, the wise
19 course of action is to try to minimize the effects and figure
20 out a way to move forward that will ultimately result in a
21 market structure that performs efficiently and rationally, and
22 that will *result in the benefits that were promoted* in the
23 move to competition. As a constitutionally created state
24 agency, our overriding concern is the public interest."
25 [emphasis added]

26 Decision No. 65154 at p. 23.

¹ Decision No. 61973 was modified only to the extent that provisions of the APS Settlement concerning divestiture and competitive procurement were either reversed or delayed. (Decision No. 65154 at p. 26-27.)

1 Indeed, one of the promoted benefits in the 1999 APS Settlement Agreement was
2 that "APS will be able to recover its regulatory assets and stranded costs as provided for in
3 this Agreement without the necessity of a general rate proceeding."² Correspondingly, the
4 benefit to both residential and commercial ratepayers was the limit on the recovery of
5 regulatory assets and stranded costs, limits which will be reopened to debate within the
6 context of the upcoming APS general rate case as agreed to by APS and Staff as set forth
7 in paragraphs 3 and 4 of the Principles for Resolution, if this Finance Application is
8 approved without a specific rejection of these provisions of the Resolution Agreement.

9 **III. CONCLUSION**

10 AECC does not argue that the Commission is prevented from changing the
11 provisions of the APS Settlement Agreement, but rather that in order to do so there must
12 be an agreement among the parties to that Agreement and the Commission must comply
13 with the requirements of A.R.S. § 40-252. Under a A.R.S. § 40-252 proceeding, all
14 parties to the APS Settlement Agreement will have an opportunity to be heard concerning
15 any alterations or modifications to the Agreement and to Decision No. 61973, and
16 participate in any negotiations designed to settle the issues that arise from the
17 Commission's Track A Order.³ On the other hand, if paragraphs 3 and 4 of the Principles
18 for Resolution are adopted in conjunction with an approval of APS' Finance Application,
19 AECC will have been denied the opportunity to meaningful participation in negotiations
20 designed to alter the provisions of the 1999 APS Settlement Agreement, and the
21 bargained-for benefits it contains for residential and commercial ratepayers.

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25 ² 1999 APS Settlement Agreement - Introduction

26 ³ Indeed, APS recognized the benefit of such negotiations when it stated in its Opening Brief "The resolution of issues through compromise and settlement is unquestionably in the public interest. . .". APS Opening Brief at p. 15, l. 13 ½ to 14 ½.

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RESPECTFULLY SUBMITTED this 6th day of February, 2003.

FENNEMORE CRAIG, P.C.

By: 
C. Webb Crockett
Attorney for Arizonans for Electric Choice
and Competition

ORIGINAL and 13 copies of the
foregoing hand-delivered for filing
this 6th day of February, 2003, to:

Docket Control
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1200 West Washington
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COPY of the foregoing hand-delivered
this 6th day of February, 2003, to:

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COPY of the foregoing emailed
this 6th day of February, 2003, to the service
list in this matter.

By: 
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