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MAR 20 2003

AZ CORP COMMISSION  
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Attorneys for Arizonans for Electric Choice and Competition

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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

**EXCEPTIONS OF ARIZONANS  
FOR ELECTRIC CHOICE AND  
COMPETITION TO  
RECOMMENDED OPINION AND  
ORDER**

**EXCEPTIONS TO RECOMMENDED OPINION AND ORDER**

Arizonans for Electric Choice and Competition ("AECC") hereby submits its Exceptions to the Recommended Opinion and Order ("Order") regarding Arizona Public Service Company's Finance Application. As a procedural matter, the Order should be amended at Page 2, line 28 and Page 37, line 11 to include AECC's participation as an intervenor. AECC's substantive arguments are set forth below.

1. The Order should Expressly Reject Paragraphs 3 and 4 of the Principles for Resolution.

While AECC is encouraged by the Order's discussion that the Principles for Resolution ("Resolution") between APS and Commission Staff ("Staff") "does not

1 eliminate APS' obligations to parties under the Settlement Agreement, or under A.R.S.  
2 40-252,"<sup>1</sup> the Commission should nevertheless expressly reject Paragraphs 3 and 4 of the  
3 Resolution to ensure that the Resolution does not in any way affect those obligations.  
4 Under the 1999 APS Settlement Agreement ("Agreement"), APS is obligated not to seek  
5 different regulatory treatment of the issues contained in Paragraphs 3 and 4 of the  
6 Resolution. If APS is allowed to seek changes to those same provisions, with or without  
7 Staff, it would constitute a material breach of the Agreement by APS, a signatory party.

8 The issues addressed in both Paragraphs 3 and 4 of the Resolution contain already  
9 bargained-for benefits. Staff, a nonparty to the agreement, should not be agreeing with  
10 APS that APS may seek to change those provisions. However, under the Resolution, the  
11 entry of the financing order by the Commission makes the Resolution effective.  
12 Therefore, clarification should be added to the Order that upholds the obligations to  
13 parties under the Agreement. Attached hereto is AECC Proposed Amendment No. 1  
14 which will achieve that clarification.

15 2. The Order Should Ensure Continued Adherence to Obligations Set  
16 Forth in the 1999 Settlement Agreement

17 Notwithstanding the need to expressly reject portions of the Resolution, certain  
18 language should be added to the Findings of Fact and Ordering Paragraphs that will  
19 clarify the principles outlined above. These clarifications help distinguish between parties  
20 and non-parties to the Agreement, and the effect approval of the financing application  
21 contained herein will have on both. The clarifications are attached hereto in AECC  
22 Proposed Amendment No. 2.

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<sup>1</sup> Recommended Opinion and Order at p. 31, line 23-24

1 3. The Order Should be Amended to Clarify that the Commission is  
2 Not Obligated to Address any Issue Contained in 3 and 4 of the  
3 Principles For Resolution in Any Future Regulatory Proceeding

4 Finally, AECC asserts that certain language contained in the Resolution should be  
5 expressly clarified to firmly establish that only Staff, and not the Commission, shall be  
6 bound by its terms. For instance, Paragraph 5 of the Principles for Resolution contains the  
7 following mandatory language:

8 The issues described in Paragraphs 2 through 4 above *shall* be  
9 considered by the Commission in the described regulatory  
10 proceedings prior to final resolution in any judicial  
11 proceeding. [emphasis added]

12 Likewise, Paragraph 7 states

13 This agreement is not intended to limit the scope and purpose  
14 of the upcoming general rate case, or the adjustment  
15 mechanism proceeding, *except as explicitly described herein.*  
16 [emphasis added]

17 As the Order itself recognizes, Staff has no legal authority to bind the Commission  
18 to the consideration of the regulatory treatment of issues outlined in Paragraphs 3 and 4 of  
19 the Resolution. Neither can Staff limit the scope and purpose of the upcoming general  
20 rate case. "The Staff's Principles of Resolution is essentially an agreement by Staff not to  
21 object to APS' inclusion of these issues in the rate case..."<sup>2</sup> Further, approval of the  
22 Finance Application is not "...intended to indicate [Commission] agreement that the issues  
23 set forth in the Principles of Resolution will be decided by us in the rate case."<sup>3</sup>

24 However, the term "regulatory proceedings" is far more expansive than the term  
25 "rate case," and the Commission should amend the Order to clarify that approval of the  
26 financing application does not bind the Commission to deciding the issues set forth in the

<sup>2</sup> Recommended Opinion and Order at p. 31, line 23-24

<sup>3</sup> Recommended Opinion and Order at p. 31, line 21-22

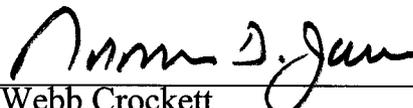
1 Principles for Resolution in *any* regulatory proceeding. This clarification is attached  
2 hereto in AECC Proposed Amendment No. 3.

3  
4 CONCLUSION

5 AECC respectfully submits that the Proposed Amendments will help to strengthen an  
6 Order that already recognizes the importance of preserving the bargained-for benefits to  
7 retail consumers under the 1999 Settlement Agreement. Moreover, their adoption will  
8 encourage all parties to participate informally amongst themselves in the event that a  
9 disagreement arises over the inclusion of issues resolved by the 1999 Settlement Agreement  
10 in any future regulatory proceedings. In light of the arguments outlined above, the  
11 Commission should adopt AECC's Proposed Amendments contained herein.

12 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of March, 2003.

13 FENNEMORE CRAIG, P.C.

14  
15 By   
16 for C. Webb Crockett  
17 Attorney for Arizonans for Electric Choice  
and Competition

18 ORIGINAL and 13 copies of the  
19 foregoing hand-delivered for filing  
this 20<sup>th</sup> day of March, 2003, to:

20 Docket Control  
21 ARIZONA CORPORATION COMMISSION  
22 1200 West Washington  
Phoenix, Arizona 85007

23 COPY of the foregoing hand-delivered  
this 20th day of March, 2003, to:

24 Christopher C. Kempley, Chief Counsel  
25 ARIZONA CORPORATION COMMISSION  
26 Legal Division  
1200 West Washington  
Phoenix, Arizona 85007

1 Ernest G. Johnson  
Director, Utilities Division  
2 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
3 Phoenix, Arizona 85007

4 Lyn Farmer, Chief Administrative Law Judge  
Hearing Division  
5 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
6 Phoenix, Arizona 85007

7 COPY of the foregoing emailed  
this 20th day of March, 2003, to  
8 the service list in this matter.

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10 By: *Lynnda P. McNaught*

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**ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION  
PROPOSED AMENDMENT #1**

TIME/DATE PREPARED: 9:00 a.m. / March 20, 2003

COMPANY: ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION      AGENDA ITEM NO.: 1

DOCKET NO.: E-01345A-02-0707      OPEN MEETING DATE: March 27, 2003

**PAGE 41, LINE 13 INSERT:** IT IS FURTHER ORDERED that approval of the financing set forth herein is conditioned on an express rejection of Paragraphs 3 and 4 of the Principles for Resolution, as the Resolution is inconsistent with current obligations to parties under the 1999 Settlement Agreement.

**ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION  
PROPOSED AMENDMENT #2**

TIME/DATE PREPARED: 9:00 a.m. / March 20, 2003

COMPANY: ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION      AGENDA ITEM NO.: 1

DOCKET NO.: E-01345A-02-0707      OPEN MEETING DATE: March 27, 2003

**PAGE 39, LINE 8, INSERT:** APS' obligations to parties under the 1999 Settlement Agreement remain unaffected by the Principles for Resolution. Because the Commission is a non-party to neither the 1999 Settlement Agreement nor the Principles for Resolution, no obligations exist between the Commission and APS.

**PAGE 41, LINE 9, INSERT:** IT IS FURTHER ORDERED that if, in any future regulatory proceeding, any party to the 1999 Settlement Agreement objects to the inclusion of issues already resolved therein, the Commission shall require to follow the procedures set forth in the Settlement Agreement to settle disputes.

IT IS FURTHER ORDERED that any future regulatory proceeding addressing the issues contained in Paragraphs 3 and 4 of the Principles for Resolution shall be conducted pursuant to A.R.S. §40-252.

**ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION  
PROPOSED AMENDMENT #3**

TIME/DATE PREPARED: 9:00 a.m. / March 20, 2003

COMPANY: ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION      AGENDA ITEM NO.: 1

DOCKET NO.: E-01345A-02-0707      OPEN MEETING DATE: March 27, 2003

**PAGE 40, LINE 16, INSERT:** Because it is not bound by any of the provisions contained in the Principles for Resolution, the Commission is under no obligation to address the issues contained in Paragraphs 3 and 4 of the Resolution in any future regulatory proceeding.