OPEN MEETING ITEM

0000054140

COMMISSIONERS
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WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL

ARIZONA CORPORATION COMMISSION

DATE: May 16, 2006

DOCKET NOS: E-00000A-02-0051 and E-00000A-01-0630

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA PUBLIC SERVICE CO.

(CODE OF CONDUCT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MAY 25, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 31 AND JUNE 1, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING ELECTRIC RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR.	DOCKET NO. E-00000A-01-0630 DECISION NO. _____ **OPINION AND ORDER**

DATE OF HEARING: November 14, 2006

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Wolfe

APPEARANCES: Ms. Karilee S. Ramaley, PINNACLE WEST CAPITAL CORPORATION LAW DEPARTMENT, and Ms. Deborah R. Scott, SNELL & WILMER, LLP, on behalf of Arizona Public Service Company;

Mr. Daniel Pozefsky, Attorney, on behalf of the Residential Utility Consumer Office; and

Ms. Janet Wagner, Attorney, Legal Division, on behalf of the Arizona Corporation Commission's Utilities Division Staff.

BY THE COMMISSION:

Background

In Decision No. 65154 (September 10, 2002) ("Track A Decision") the Commission directed Arizona Public Service Company ("APS") to submit modifications to its Code of Conduct.[1] APS filed a proposed revised Code of Conduct on November 12, 2002. Decision No. 65743 (March 14, 2003) ("Track B Decision") directed the Commission's Utilities Division Staff ("Staff") to file

[1] The existing APS Code of Conduct was approved by the Commission in Decision No. 62416 (April 3, 2000) ("2000 Code of Conduct"). Decision No. 65154 included a determination that the 2000 Code of Conduct, which addresses APS' interactions with its retail affiliate, should be expanded to also address APS' interactions with all affiliates in energy-related fields, including affiliates who sell power (Decision No. 65154 at 25).

reports in these dockets, within 60 days of the Independent Monitor's final reports on the Track B solicitation, on the Codes of Conduct previously filed by APS and Tucson Electric Power Company ("TEP"). Decision No. 65743 stated that hearings would be scheduled on the Codes of Conduct following the filing of those Staff Reports. Staff filed a Staff Report on August 13, 2003, suggesting certain changes to APS' proposed revised Code of Conduct. On October 28, 2003, following a Procedural Conference held on October 3, 2003, a Procedural Order was issued that adopted the parties' recommendation that a hearing should be scheduled on the proposed modifications to APS' Code of Conduct following the conclusion of the APS rate case pending in Docket No. E-01345A-03-0437, because the Decision in the rate case docket might result in a narrowing of the issues in APS' Code of Conduct proceeding.[2] No hearing was scheduled on TEP's Code of Conduct.[3]

Following the issuance of Decision No. 67744 (April 7, 2005) in the APS rate case docket, a Procedural Conference was held to discuss a procedural schedule for the hearing on APS' Code of Conduct. On May 3, 2005, a Procedural Order was issued setting a hearing date and notice requirements. A hearing was held on November 14, 2005. APS, RUCO and Staff entered appearances through counsel. APS and Staff presented evidence. Following the filing by APS and Staff of post-hearing exhibits and briefs, the matter was taken under advisement pending the submission of a recommended Opinion and Order for the Commission's final disposition.

APS considered comments solicited from other parties to this docket and Staff's prefiled direct testimony, and attached its modified proposal for the APS Code of Conduct to its prefiled rebuttal testimony, which was filed on October 21, 2005. APS further modified its Code of Conduct proposal following the hearing, and attached a copy of its post-hearing proposal to its closing brief filed on December 12, 2005. That document is referred to herein as the "APS Proposed Code of Conduct."

Also on December 12, 2005, Staff filed post-hearing exhibits which are redlined versions of

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[2] In that rate case docket, APS had proposed to place assets of its affiliate Pinnacle West Energy Corporation ("PWEC") in APS' rate base.

[3] The October 28, 2003 Procedural Order directed Staff to monitor the situation between TEP and its regulated affiliates and make a recommendation to the Commission for revisions to TEP's current Code of Conduct if, in Staff's judgment, Staff believes revisions are warranted, and ordered that if in the future, TEP either forms or acquires an affiliate that sells wholesale or competitive retail electricity, TEP must file, within 60 days of the formation or acquisition, a revised Code of Conduct for Commission approval.

the July 29, 2005 version of the APS proposal for its Code of Conduct that reflect the changes recommended by Staff both prior to and following the evidentiary hearing.

Introduction

While APS and Staff are in general agreement on much of the Code of Conduct, a few areas of disagreement remain. The parties' major disagreement is in regard to whether the definition of "Competitive Electric Affiliate" in the Code of Conduct applies to APS' parent, Pinnacle West Capital Corporation ("Pinnacle West"). APS believes the definition should not apply to Pinnacle West, while Staff recommends that this Decision specifically find that Pinnacle West falls within the definition of "Competitive Electric Affiliate" proposed by APS. APS recommended a language change regarding corporate governance that it believed would be necessary if Staff's position were adopted. As discussed below, we find that the definition of "Competitive Electric Affiliate" in the Code of Conduct does apply to APS' parent Pinnacle West, because Pinnacle West directly participates in the wholesale electric market. We also find APS' proposed language addition regarding corporate governance to be appropriate.

Attached to this Decision as Exhibit A is a Code of Conduct for APS that is based on the APS Proposed Code of Conduct. Exhibit A includes the modifications to that document that are discussed below and adopted herein. Changes to the APS Proposed Code of Conduct adopted by this Decision are delineated in the text of Exhibit A as follows: strikeout text shows this Decision's deletions of language from the APS document; underlined text shows this Decision's adoption of language additions to the APS document proposed by Staff; and italicized text shows this Decision's addition of other language to the APS document. Plain text is that from the APS Proposed Code of Conduct adopted by this Decision.

Discussion

<u>Application of the Definition of "Competitive Electric Affiliate"</u>

The APS Proposed Code of Conduct defines the term "Competitive Electric Affiliate" to mean "those affiliates of APS engaged in either Competitive Retail Services or Competitive Wholesale Services." The APS Proposed Code of Conduct defines the term "Competitive Wholesale Services" as "the provision of energy products or services to the wholesale market." There was no

dispute in this proceeding that Pinnacle West provides energy to wholesale customers. APS argues, however, that the Code of Conduct should not be construed to include Pinnacle West as a "Competitive Electric Affiliate" because the Commission ordered a review of the Code of Conduct in the Track A Decision in order to address concerns with APS' relationship with PWEC. Staff asserts that APS' reasoning is faulty, because it overlooks the purpose behind the decision to expand the Code of Conduct, which is to ensure proper interaffiliate relationships between APS and its various Competitive Electric Affiliates. We agree with Staff that while PWEC may have been the Commission's focus at the time the decision was made to re-examine the Code of Conduct, it would circumvent the purpose of the Code of Conduct to ignore Pinnacle West, an affiliated entity that clearly provides electric service in the wholesale market. In discussions of the need to re-examine the 2000 Code of Conduct, the Track A and Track B Decisions did not expressly single out PWEC in discussing affiliated resources.[4] We agree with Staff that the historical perspective of PWEC as the Commission's focus in prior proceedings should not circumscribe the application of the Code of Conduct's requirements to PWEC alone. Pinnacle West falls within the definition of "Competitive Electric Affiliate" proposed by APS. In order to ensure proper interaffiliate relationships between APS and its various Competitive Electric Affiliates, Pinnacle West, which provides electric service in the wholesale market, should be subject to the Code of Conduct.

APS' testimony listed several unintended consequences and harms that it believed could result from construing Pinnacle West as a "Competitive Electric Affiliate."[5] APS expressed concern that such construction could prevent Pinnacle West from providing corporate governance to its affiliates. APS stated, for example, that it is critical for Pinnacle West to have access to nonpublic information about APS' load growth forecasts for effective corporate governance, because such information affects corporate requirements and processes, such as earnings forecasts and capital expenditures, and that Pinnacle West requires broad access to information from its affiliates to satisfy

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[4] *See* Track A Decision, which stated that the 2000 Code of Conduct should be expanded to cover "an investor-owned electric utility regulated by the Commission and all affiliates in energy-related fields, including affiliates who sell power" (Decision No. 65154 at 25); and the Track B Decision, which states that "the experience of the initial solicitation will provide insight to the requirements of a working Code of Conduct in an environment that includes the availability to regulated utilities of both affiliated and non-affiliated generation resources" (Decision No. 65743 at 57).

[5] *See* Hearing Exhibit A-2, Rebuttal Testimony of Jeffrey B. Guldner at 4-6.

fiduciary obligations and Sarbanes-Oxley Act requirements. At the hearing, however, APS was unable to identify the particular provisions in the APS Proposed Code of Conduct that would create the alleged unintended consequences and harm.[6] In addition, we note that APS included "corporate governance" in its Proposed Code of Conduct definition of "Shared Services," and that Staff did not oppose this provision. We find that including the term "corporate governance" in the definition of "Shared Services" will alleviate the concerns APS raised regarding Pinnacle West's ability to carry out its corporate governance duties, while still making Pinnacle West subject to the requirements of the Code of Conduct in its capacity as a provider of "Competitive Wholesale Services" as defined therein.

Provision of Trading Desk "Shared Services" by APS "Operating Employees" to Pinnacle West

Staff recommended that the definition of "Shared Services" include a provision stating that "Operating Employees" are excluded from providing "Shared Services." We find this reasonable, given that the definition of "Operating Employees" means employees, contractors, consultants, or agents who have day-to-day duties and responsibilities for planning, directing organizing, or carrying out energy-related operations. Such employees should be prohibited from providing "Shared Services." The definition of "Shared Services" in the APS Proposed Code of Conduct will therefore be clarified to provide that "Operating Employees" are prohibited from providing "Shared Services."

This clarification, while necessary and important, requires one exception, however, because Pinnacle West no longer has a separate affiliate that provides energy trading services to itself and its affiliates. Pinnacle West's marketing and trading function was moved to APS after the Track A Decision, so that the only trading floor existing within the Pinnacle West companies is now located within APS. APS is currently providing trading desk services to Pinnacle West under a specific service agreement. Because Pinnacle West itself participates in the wholesale electricity market, this situation presents an opportunity for improper information sharing between APS and Pinnacle West employees. Staff believes that as long as the same employees do not provide the same services for both entities, the definition of "Operating Employees" should not preclude APS from providing

[6] Hearing Transcript at 22-28, 63-64.

trading desk services to Pinnacle West. We find this reasonable under the circumstances, as long as appropriate safeguards are put in place to guard against the possibility of any improper sharing of information. While APS and Staff agreed that the definition of "Operating Employees" should be modified to allow this exception, we find that this exception would be more clearly defined by the following language additions, which appear in Exhibit A: adding the term "trading desk employees" to the definition of "Operating Employees;" adding the phrase "Unless specifically authorized in this Code of Conduct" prior to Staff's language excluding "Operating Employees" from providing "Shared Services" in the definition of "Shared Services," and also prior to APS' similar language in Part Two, Section IV.G; and by adding a new sub-part to Part Two, Section IV, (the "Separation Requirements" section of Part Two), which will now read as follows:

> I. Because Pinnacle West engages in wholesale marketing but does not have a separate marketing and trading affiliate, APS Operating Employees may provide trading desk services to Pinnacle West, but only if the following safeguards are instituted and maintained: APS Operating Employees who provide trading desk services to Pinnacle West are prohibited from providing trading desk services to APS, and APS Operating Employees who provide trading desk services to APS are prohibited from providing trading desk services to Pinnacle West. Each employee who provides trading desk services shall be trained regarding the Code of Conduct and shall certify that he or she will not be a conduit for improperly sharing information. As set forth in Section VIII.D of this Part Two below, APS shall report all transfers of all trading desk employees.

In addition, Part Two - Section VIII.D, which requires APS to report transfers between APS and its Competitive Electric Affiliates of employees at the manager level or above, should be expanded to reflect the requirement that APS annually identify all transfers of all trading desk employees between APS and its Competitive Electric Affiliates, with the addition of the following language: "In addition, this report shall identify all transfers between APS and its Competitive Electric Affiliates of all trading desk employees."

<u>Training and Certification Regarding Prohibition on Improper Sharing of Information</u>

Both APS and Staff recommended language for Part Two, Section IV.G's requirements for "Shared Services" employees regarding improper information sharing. We find that a combination of

both parties' proposed language best serves the purpose of the Code of Conduct, in that the combined language specifies within this section[7] that such employees must both be trained regarding the Code of Conduct and must certify, either in writing or electronically, that he or she will not be a conduit for improperly sharing information. Staff states that while an electronic certification is acceptable, APS should allow Staff to review and approve the certification form. We will order APS to address this issue in the changes to its Policies and Procedures that it will be required to file in this docket as a compliance item upon approval of the Code of Conduct.

Staff recommends that Part Two, Section IV include a new sub-part H that prohibits shared risk management employees from acting as a conduit for improperly sharing information. We find this recommendation reasonable and adopt it.

Staff's Proposed Additions to the Transfers of Goods and Services Provisions

Staff recommends that Part Two, Section V.A of the Code of Conduct should include a provision prohibiting the same lawyer from representing both sides in an Arm's Length Transaction between APS and any of its Competitive Electric Affiliates. We find that Staff's recommended prohibition on the same lawyer representing both sides should be extended to any individual or entity acting on behalf of the affiliates involved in Arm's Length Transactions, and will therefore add the words "or other negotiator" following the word "lawyer" to Staff's recommended language. Staff also recommends the addition of a new sub-part G to this section that provides examples of non-Arm's Length Transactions. We find these additions to the APS Proposed Code of Conduct to be reasonable and they will be adopted.

Miscellaneous

Because the term "third party" is used in the Code of Conduct outside the definition of "Third Party" in the Definitions section of the Code of Conduct, the definition requires clarification that

[7] This specification is in addition to a more general education requirement that appears in Part Two, Section VI.

where not capitalized in the Code of Conduct, "third party" has its customary meaning. This change has been made to the APS Proposed Code of Conduct and appears in Exhibit A.

Staff recommended that customers' written authorization for provision of "Confidential Customer Information" (Part Two – Section III.A) "may" include a printed version of an electronic authorization in lieu of the term "would" as it appears in APS' Proposed Code of Conduct. We find the word "may" preferable to the word "would," in that it would allow an alternative form of written authorization to accommodate a customer's preference. Staff also recommended that the word "written" be added to sub-part B of this section and we will adopt this recommendation, as it adds clarity. These recommendations are reasonable and will be adopted.

We find that Part Two, Section VI.E, which addresses employee training on the Code of Conduct, is clarified by the addition of the following language: "This provision is in addition to the more specific education and certification requirements set forth in other provisions of this Code of Conduct." This change has been made to the APS Proposed Code of Conduct and appears in Exhibit A.

Part Four, Section II.E requires that if APS wishes to procure energy or capacity from an affiliate through a bilateral contract, APS must provide, through its Competitive Procurement website, non-affiliated entities an opportunity to beat any proposed contract before executing the transaction. We find that this requirement would benefit from clarification provided by the addition of the words "notice of and" before "an opportunity to beat." This change has been made to the APS Proposed Code of Conduct and appears in Exhibit A. We will also require APS to address what constitutes the necessary requirements for proper notice in the proposed changes to APS' Policies and Procedures that APS will be required to file in this docket as a compliance item following this Decision.

While Part Four, Sections I and III refer to the Commission's Environmental Portfolio

Standard rules, they do not refer to the proposed Renewable Energy Standard and Tariff rules, which the Commission ordered to be published in a Notice of Proposed Rulemaking in Decision No. 68566 (March 1, 2006). The words "proposed Renewable Energy Standard and Tariff" should therefore be added to these sections following "Environmental Portfolio Standard" where that term appears. These changes have been made to the APS Proposed Code of Conduct and appear in Exhibit A.

Conclusion

We find that with the modifications discussed herein and reflected in Exhibit A, the resulting APS Code of Conduct for the Arizona Corporation Commission is fair and reasonable, incorporates the provisions required by the Track A Decision and the Track B Decision to facilitate wholesale competition, and incorporates the procurement-related provisions set forth in Decision No. 67744, including the Secondary Procurement Protocols.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On September 10, 2002, the Commission issued Decision No. 65154 in these consolidated dockets. Decision No. 65154 ordered APS and Tucson Electric Power Company ("TEP") to submit modifications to their existing Codes of Conduct.

2. On November 12, 2002, APS filed modifications to its Code of Conduct.

3. Also on November 12, 2002, TEP filed a letter with the Commission stating that neither TEP nor its parent, UniSource Energy, has a competitive electric service provider, a separate generation affiliate, or an affiliate involved in the marketing and trading of wholesale power.

4. On March 14, 2003, the Commission issued the Track B Decision in these consolidated dockets. Decision No. 65743 directed Staff to file reports in these dockets on the Codes of Conduct previously filed by APS and TEP, within 60 days of the Independent Monitor's final reports. Decision No. 65743 stated that the Staff Reports should include, but not be limited to, an analysis of the Standards of Conduct developed for the Track B solicitations, their applicability to the

respective Codes of Conduct filed by APS and TEP, and recommendations regarding their incorporation into the Codes of Conduct. Decision No. 65743 provided that hearings would be scheduled on the Codes of Conduct following the filing of those Staff Reports.

5. Following the filing of a Staff Report in these dockets on August 13, 2003, a Procedural Conference was held on October 3, 2003. APS, TEP, Panda Gila River, LP, the Arizona Utilities Investors Association ("AUIA"), the Residential Utility Consumer Office ("RUCO") and Staff entered appearances and discussed the procedural schedule for hearings on the APS and TEP Codes of Conduct.

6. On October 28, 2003, following the Procedural Conference, a Procedural Order was issued. The Procedural Order directed that Staff monitor the situation between TEP and its affiliates and make a recommendation to the Commission for revisions to TEP's Code of Conduct if, in Staff's judgment, revisions are warranted. It also ordered TEP to file a revised Code of Conduct for Commission approval within 60 days of the formation or acquisition of any affiliate that sells wholesale or competitive retail electricity.

7. The October 28, 2005 Procedural Order stated that a hearing would be scheduled on the proposed modifications to APS' Code of Conduct after the conclusion of the APS rate case pending in Docket No. E-01345A-03-0437.

8. On April 7, 2005, the Commission issued Decision No. 67744 in APS' rate case docket. By Procedural Order issued April 13, 2005, a procedural conference was scheduled for the purpose of discussing procedural matters relating to the hearing on APS' Code of Conduct.

9. A Procedural Conference was held on April 27, 2005 as scheduled. APS, Gila River Power, LP,[8] TEP, AUIA, RUCO and Staff appeared through counsel. APS proposed a procedural schedule with which all parties appearing were in agreement. A Procedural Order was issued on May 3, 2005, setting the hearing on APS' Code of Conduct for November 14, 2005.

10. On June 2, 2005, APS filed a certification of publication verifying that it caused notice of the hearing to be published in the *Arizona Republic* on May 28, 2005.

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[8] A filing was made in this docket on April 27, 2005, stating that Panda Gila River, LP changed its name to Gila River Power, LP.

11. On July 29, 2005, APS filed direct testimony, to which was attached a modified Proposed Code of Conduct based on input that APS solicited from parties to this docket.

12. On September 30, 2005, Staff filed direct testimony.

13. On October 21, 2005, APS filed rebuttal testimony, to which was attached a further modified Proposed Code of Conduct in response to Staff's direct testimony.

14. A Pre-Hearing Conference was held as scheduled on November 9, 2005.

15. On November 10, 2005, APS filed information requested at the Pre-Hearing Conference.

16. The hearing was held as scheduled on November 14, 2005 before a duly authorized Administrative Law Judge of the Commission. APS, RUCO, and Staff appeared through counsel. APS and Staff presented evidence. No members of the public appeared to provide public comment.

17. On December 12, 2005, APS filed its Initial Post-Hearing Brief, to which was attached a copy of the APS Proposed Code of Conduct.

18. Also on December 12, 2005, Staff filed its Closing Brief. Also on that date, Staff filed exhibits showing the changes Staff recommended to APS' Code of Conduct in direct testimony and at the hearing.

19. On December 30, 2005, APS filed its Post-Hearing Reply Brief.

20. The APS Proposed Code of Conduct should be modified as discussed herein, and as shown on Exhibit A, attached hereto.

21. With the modifications discussed herein and reflected in Exhibit A, the resulting APS Code of Conduct for the Arizona Corporation Commission is fair and reasonable, incorporates the provisions required by the Track A Decision and the Track B Decision to facilitate wholesale competition, and incorporates the procurement-related provisions set forth in Decision No. 67744, including the Secondary Procurement Protocols.

22. The APS Proposed Code of Conduct, as modified herein and shown on attached Exhibit A should be adopted.

23. APS should be required to file any necessary modifications to its Code of Conduct Policies and Procedures as a compliance item in this docket within 45 days of this Decision.

24. The APS Proposed Code of Conduct, as modified herein and shown on attached Exhibit A, applies to the conduct of APS and all its Competitive Electric Affiliates, as defined in the APS Proposed Code of Conduct, which includes Pinnacle West.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV, Section 3 of the Arizona Constitution.

2. Notice of the proceeding was provided as required by law.

3. The APS Proposed Code of Conduct, as modified herein and shown on attached Exhibit A, addresses each of the specific requirements set forth in A.A.C. R14-2-1616, and incorporates the provisions required by the Track A and Track B Orders to facilitate wholesale competition, and incorporates the procurement-related provisions set forth in Decision No. 67744, including the Secondary Procurement Protocols.

ORDER

IT IS THEREFORE ORDERED that the Arizona Public Service Company Proposed Code of Conduct, as modified herein and shown on attached Exhibit A, is hereby approved.

IT IS FURTHER ORDERED that Arizona Public Service Company shall file within 10 days, as a compliance item in this docket, a revised Code of Conduct that complies with the modifications approved herein as shown on attached Exhibit A.

IT IS FURTHER ORDERED that the Code of Conduct approved in Decision No. 62416 (April 3, 2000) is hereby replaced and superseded by the APS Proposed Code of Conduct as modified and approved herein.

IT IS FURTHER ORDERED that Arizona Public Service Company shall file within 45 days, as a compliance item in this docket, any necessary modifications to its Policies and Procedures as defined in the Code of Conduct approved herein, pursuant to the requirements of the Code of Conduct approved herein. Such modifications shall include, but are not limited to, Arizona Public Service Company's proposed means of electronic certification by its employees of the education and training requirements of the Code of Conduct as modified and approved herein; and the necessary requirements for proper notice on Arizona Public Service Company's Competitive Procurement

website to unaffiliated entities of their opportunity to beat the terms of any bilateral contract for Competitive Procurement that Arizona Public Service Company intends to enter with an affiliated entity.

IT IS FURTHER ORDERED that this Decision and the APS Proposed Code of Conduct as modified and approved herein shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

_____
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

TW:mj

SERVICE LIST FOR: ELECTRIC RESTRUCTURING

DOCKET NO.: E-00000A-02-0051 and E-00000A-01-0630

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CODE OF CONDUCT
FOR THE
ARIZONA CORPORATION COMMISSION

Note:

The attached Exhibit A is based on the wording from APS' Proposed Code of Conduct as attached to its closing brief in this proceeding. For the convenience of the reader, this Decision's changes to that APS document are delineated in the text of this Exhibit A as follows:

Strikeout text shows this Decision's deletions of language from the APS document.

Underlined text shows this Decision's adoption of language additions to the APS document proposed by Staff.

Italicized text shows this Decision's addition of other language to the APS document.

Plain text shows this Decision's adoption of language proposed by APS.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part One – Definitions

"APS" means Arizona Public Service Company.

"Arm's Length Transaction" means a transaction between or among parties, each of whom acts in its own interest and where the final decision on the transaction is not made by a single individual or group of individuals with direct management control or other authority over both parties.

"Commission" means the Arizona Corporation Commission.

"Competitive Electric Affiliate" means those affiliates of APS engaged in either Competitive Retail Services or Competitive Wholesale Services.

"Competitive Procurement" means a process by which power is procured by APS.

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

"Competitive Retail Services" means unbundled generation, unbundled metering, unbundled meter reading, and other retail electric services that have been determined to be competitive services by the Commission.

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

"Confidential Customer Information" means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services. Confidential Customer Information also includes non-public customer-specific information obtained by APS from customers of special districts and public power entities on behalf of such special districts and public power entities.

"Confidential Information" means Confidential Customer Information and any other nonpublic information regarding Competitive Retail Services or Competitive Wholesale Services obtained solely through the provision of Noncompetitive Services or in a Competitive Procurement process. Confidential Information shall not include information that is otherwise available to non-affiliated third parties or information necessary for a Competitive Electric Affiliate to provide or receive Shared Services.

"Distribution Information" means information about available distribution capability, transmission access, and curtailments.

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"Electric Service Provider" means an entity authorized by a Certificate of Convenience and Necessity to provide Competitive Retail Services in Arizona.

"Extraordinary Circumstance" means any situation that requires APS to act in a manner contrary to this Code of Conduct to ensure the reliability of APS' system, or ensure the safety of employees or the public, or to respond to any other emergency where such action is required.

"FERC" means the Federal Energy Regulatory Commission.

"Noncompetitive Services" means unbundled distribution service, Standard Offer Service and other services that have been determined to be noncompetitive services by the Commission.

"Operating Employees" means employees, contractors, consultants, or agents who have day-to-day duties and responsibilities for planning, directing, organizing, or carrying out energy-related operations. Operating Employees include, but are not limited to, generation employees, transmission employees, *trading desk employees,* and distribution employees. Operating employees do not include employees performing support services in the areas specifically identified in the definition of Shared Services. ~~This is not intended to preclude APS from providing trading desk services to Pinnacle West as long as the same employees do not provide the same service for both entities.~~

"Pinnacle West" means Pinnacle West Capital Corporation.

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

"Shared Services" means those support services provided by Pinnacle West or any of its affiliates, including but not limited to: human resources; accounting; corporate governance; tax; insurance; risk and insurance management, claims services, and public safety; energy risk management; audit services; contract management; information and communication technology; communications; environmental, health and safety; regulatory services; system dispatch; transportation; security; facilities; shareholder services; law and business practices; public affairs; and enterprise finance. *Unless specifically authorized in this Code of Conduct,* Operating Employees are *prohibited* from providing Shared Services.

"Standard Offer Service" means the bundled provision of retail electric service.

"Third Party" means any Electric Service Provider or market participant other than a Competitive Retail Affiliate that may lawfully provide Competitive Retail Services in Arizona. *Where not capitalized in this Code of Conduct, "third party" has its customary meaning.*

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part Two – Basic Principles

I. Applicability of Code of Conduct

A. The Code of Conduct applies to APS and its interactions with its Competitive Electric Affiliates, unless an Extraordinary Circumstance excuses compliance.

B. Regardless of any provision of this Code of Conduct, in an Extraordinary Circumstance APS may take whatever steps are necessary to ensure the reliability of APS' system, to protect the public interest, or to ensure safety for employees and the public. APS shall notify the Commission within 24 hours of or the next business day after an Extraordinary Circumstance and shall post on a public Website a description of the Extraordinary Circumstance and the action taken by APS.

II. No Discrimination in Service

APS shall not give preferential treatment to its Competitive Electric Affiliates and shall treat affiliated and non-affiliated entities in a nondiscriminatory manner in providing service.

III. Confidential Information

A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or a Third Party without the customer's prior written authorization, which ~~would~~ may include a printed version of an electronic authorization. Such information may be provided only to the extent specifically authorized.

B. APS shall not provide Confidential Information to a Competitive Electric Affiliate unless such information is also made available to Third Parties under similar terms and conditions. This restriction shall not apply to Confidential Customer Information provided with the customer's prior written authorization.

C. If Confidential Customer Information is properly requested by a Third Party, APS shall not unreasonably delay or withhold the release of the requested Confidential Customer Information.

IV. Separation Requirements

A. APS shall be a separate corporate entity from its Competitive Electric Affiliates.

B. Unless otherwise permitted by the Code of Conduct, APS shall operate separately from its Competitive Electric Affiliates to the extent practical.

C. APS shall keep separate books and records and shall keep accounting records that set forth appropriate cost allocations between APS and its Competitive Electric Affiliates, which shall be made available to the Commission in accordance with A.A.C. R14-2-804(A).

D. APS and its Competitive Electric Affiliates may share equipment and facilities only in accordance with the functional separation requirements set forth in this Code of Conduct and the Policies and Procedures.

E. APS and its Competitive Electric Affiliates shall not jointly employ the same employees, except that APS and its Competitive Electric Affiliates may utilize common officers and directors for corporate support, oversight, and governance. APS officers directly responsible for operational matters shall not service as officers or directors of a Competitive Electric Affiliate. Common officers and directors shall not be utilized to circumvent the prohibition on providing Confidential information to a Competitive Electric Affiliate, nor shall such common officers or directors be permitted to participate during the development or conduct of any Competitive Procurement process, or in any subsequent negotiations in which a Competitive Electric Affiliate employing the common officer or director participates as a bidder.

F. Contracts for services accounted for in conformance with Part 2, Section V of this Code of Conduct shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS and any Competitive Electric Affiliate.

G. APS and its Competitive Electric Affiliates may utilize Shared Services in accordance with Part 2, Section V of this Code of Conduct but Shared Services shall not act as conduit for Confidential Information to Competitive Electric Affiliates. ~~Eash shared service employee shall be required to acknowledge, either in writing or electronically, that he or she will not be a conduit for improperly sharing Confidential Information.~~ *Unless specifically authorized in this Code of Conduct,* Operating Employees cannot provide Shared Services nor shall a shared attorney represent both APS and a Competitive Electric Affiliate in a transaction. Each employee who provides Shared Services shall be trained regarding the Code of Conduct and shall certify, *either in writing or electronically,* that he or she will not be a conduit for improperly sharing information.

H. Shared risk management employees shall not be Operating Employees of either APS or its Competitive Electric Affiliates.

I. Because Pinnacle West engages in wholesale marketing and trading, but does not have a separate marketing and trading affiliate, APS Operating Employees may

provide trading desk services to Pinnacle West, but only if the following safeguards are instituted and maintained: APS Operating Employees who provide trading desk services to Pinnacle West are prohibited from providing trading desk services to APS, and APS Operating Employees who provide trading desk services to APS are prohibited from providing trading desk services to Pinnacle West. Each employee who provides trading desk services shall be trained regarding the Code of Conduct and shall certify that he or she will not be a conduit for improperly sharing information. As set forth in Section VIII.D of this Part Two below, APS shall report all transfers of all trading desk employees.

V. Transfers of Good and Services

A. APS shall not subsidize its Competitive Electric Affiliates through any rates or charges for Noncompetitive Services and, except as otherwise provided below, all transactions between APS and its Competitive Electric Affiliates shall be Arm's Length Transactions. The same lawyer *or other negotiator* may not represent both sides in an Arm's Length Transaction between APS and one of its Competitive Electric Affiliates.

B. Shared Services may be provided by APS to its Competitive Electric Affiliates, and such services shall be accounted for in accordance with the Policies and Procedures.

C. APS may acquire Shared Services from Pinnacle West and such services shall be accounted for in accordance with the Policies and Procedures.

D. Any services provided by APS or its Competitive Electric Affiliates that are subject to a filed tariff shall be provided at the rates and under the terms and conditions set forth in the tariff, unless an exception is permitted by the governing body with jurisdiction over such tariff. APS shall not be required to charge its Competitive Electric Affiliates more than its authorized tariff rate for any Noncompetitive Service.

E. If APS sells to its Competitive Electric Affiliates non-tariffed goods or services, the transfer price shall be the higher of cost or market.

F. If APS' Competitive Electric Affiliates sell to APS non-tariffed goods or services, the transfer price shall be at a price not to exceed market.

G. Examples of non- Arm's Length Transactions include transactions where the price is either the higher of or lower of fully allocated cost or fair market value; transactions under a tariff where a price or rate is specified; corporate transactions such as dividends or payments of any entity's share of taxes, benefits, or other

pass-through costs; and Shared Services when accounted for in accordance with the Polices and Procedures.

VI. Compliance, Dissemination and Education

A. Compliance with the Code of Conduct is mandatory.

B. The failure or refusal of an employee of APS or its affiliates to abide by or to act according to the Code of Conduct or the Policies and Procedures may subject the employee to disciplinary action, up to and including discharge from employment.

C. Copies of this Code of Conduct shall be provided to employees and agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct.

D. A copy of the Code of Conduct shall be made available to all employees of APS and its Competitive Electric Affiliates on the corporate Intranet site.

E. Training on the provisions of the Code of Conduct and its implementation shall be provided to the employees of APS and its Competitive Electric Affiliates and those authorized agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct. *This provision is in addition to the more specific education and certification requirements set forth in other provisions of this Code of Conduct.*

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

G. APS shall provide a means for employees to raise questions and report concerns regarding this Code of Conduct.

VII. Modifications to the Code of Conduct or Policies and Procedures

A. APS may request modifications to the Code of Conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.

B. APS may not make and implement any material change to the Policies and Procedures, including modifications to allocation methods or the direct and indirect allocators used in the Policies and Procedures, without filing an update with the Commission or its designee. Once notification is made by APS of an intended modification, if no action is taken by the Commission or its designee within 30 days of its filing, the modification shall be deemed approved.

VIII. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis each April 15th, which shall be available to the public:

A. A list of all Extraordinary Circumstances that explains the nature, cause, and duration of each incident.

B. A report summarizing the charges associated with all non-tariffed transactions between APS and its Competitive Electric Affiliates, with the associated charges reported separately for each Competitive Electric Affiliate and for each category of service.

C. A reporting detailing (i) how many non-Standard Offer Service customers were provided metering services or meter reading services and (ii) how many Electric Service Providers received consolidated billing services from APS.

D. A report identifying all transfers between APS and its Competitive Electric Affiliates of employees at the manager level or above. *In addition, this report shall identify all transfers between APS and its Competitive Electric Affiliates of all trading desk employees.*

IX. Dispute Resolution

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in A.A.C. R14-2-212.

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Part Three – Retail Electric Competition

I. Non-Discrimination

A. If a retail tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Retail Affiliates and Third Parties and their respective customers.

B. APS shall process requests for service by Competitive Retail Affiliates and Third Parties and their respective customers in the same manner and within the same time period.

C. APS shall offer access to Distribution Information to its Competitive Retail Affiliates and Third Parties concurrently and under the same material terms and conditions.

II. Consolidated Billing and Promotions within the Bill Envelope

A. If APS includes charges for Competitive Retail Services in its bills for Noncompetitive Services, APS shall offer the same service to any Third Party on the same material terms and conditions.

B. This provision shall not prevent a Competitive Retail Affiliate or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement if authorized by the customer.

C. If APS includes with its bills for Noncompetitive Services advertising or promotional materials from its Competitive Retail Affiliates, APS shall offer the same service to any Third Party on the same material terms and conditions.

III. Company Contact Information

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

IV. Prohibition on Suggestion of Utility Advantage

A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases service from APS' Competitive Retail Affiliates will receive preferential treatment in the provision of Noncompetitive Services or have any other advantage regarding the provision of Noncompetitive Services nor may APS require the purchase of any Competitive Electric Service from APS'

Competitive Retail Affiliates as a condition to providing Noncompetitive Services.

B. The name or logo of APS as a utility distribution company shall not be used in promotional advertising material circulated by a Competitive Retail Affiliate.

C. APS personnel shall not state to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by APS' Competitive Retail Affiliates or any Third Party.

D. APS shall either direct customers who inquire about Competitive Retail Services to the Commission for a list of Electric Service Providers or may provide such customers with a copy of the current Commission list of such providers. APS and its employees may not state any recommendation or preference or otherwise attempt to influence a potential customer in their choice of an Electric Service Provider.

E. APS may not enter into special contracts which provide generation service at a discount to Standard Offer Service customers without the express authorization of the Commission.

V. Joint Marketing

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

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Part Four – Competitive Procurement

I. Applicability

A. These Competitive Procurement principles shall apply to wholesale acquisition of energy, capacity and physical hedge transactions for APS Standard Offer Service Customers.

B. These Competitive Procurement principles do not apply in cases of emergencies or for short-term acquisitions to maintain system reliability, nor unless otherwise stated, to transactions to satisfy APS' obligations under the Commission's Environmental Portfolio Standard, *proposed Renewable Energy Standard and Tariff,* and Demand Side Management programs.

II. Acceptable Procurement Methods

A. Purchases through third party, on-line trading systems, including but not limited to the Intercontinental Exchange, Bloomberg, California Independent System Operator, New York Mercantile Exchange or other similar on-line third party systems.

B. Purchases from qualified, third party, independent energy brokers.

C. Purchases from non-affiliated entities through auctions or a request for proposals process administered by APS.

D. Bilateral contracts with non-affiliated entities.

E. Bilateral contracts with affiliated entities, provided that if APS proposes to procure energy or capacity from an affiliate through a bilateral contract APS will provide, through its Competitive Procurement website, non-affiliated entities *notice of and* an opportunity to beat any proposed contract before executing the transaction.

F. Any other Competitive Procurement process approved by the Commission.

III. Participation of Competitive Electric Affiliate

A. APS shall not give preferential treatment to its Competitive Electric Affiliates in any Competitive Procurement or in the procurement of Demand Side Management, *proposed Renewable Energy Standard and Tariff,* or Environmental Portfolio Standard resources.

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B. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement request for proposals or auction process, an independent monitor selected by Staff will oversee the process.

C. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, APS shall keep detailed records of any and all contacts with the Competitive Electric Affiliate, including employees and contractors, regarding the Competitive Procurement for the life of the contract plus five years.

D. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, personnel involved in the preparation of a Competitive Electric Affiliate's bid in the solicitation process shall not have contact with personnel conducting the solicitation or advising APS in the solicitation concerning any business matter related to the Competitive Procurement except as provided below.

E. The content of any communication between a Competitive Electric Affiliate that is a bidder in a Competitive Procurement and APS personnel (including contractors and agents) conducting the Competitive Procurement must be contemporaneously posted on the Competitive Procurement Website. A Competitive Electric Affiliate may, however, attend bidders' conferences and other public meetings regarding a Competitive Procurement.

F. Copies of the bilateral power contracts between APS and Competitive Electric Affiliates shall be retained by APS for a minimum of the life of the contract plus five years.