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BEFORE THE ARIZONA CORPORATION CO.

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2008 MAR 31 A 10:44  
AZ CORP COMMISSION  
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IN THE MATTER OF THE CONSIDERATION  
PURSUANT TO A.R.S. § 40-252, TO  
MODIFY DECISION NO. 67744 RELATING  
TO THE SELF-BUILD OPTION.

Docket No. E-01345A-07-0420

**RUCO'S  
CLOSING BRIEF**

The Residential Utility Consumer Office ("RUCO") hereby files its Closing Brief in this matter.

Arizona Corporation Commission

**DOCKETED**

MAR 31 2008

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1 **BACKGROUND**

2 The Arizona Corporation Commission's ("Commission") Decision No. 67744 adopted,  
3 with modifications, a Settlement Agreement regarding a 2003 rate application by Arizona  
4 Public Service Company ("APS"). The Settlement Agreement included a partial restriction on  
5 APS putting into service any self-built generation prior to January 1, 2015 without the prior  
6 approval of the Commission (the "Self-Build Moratorium").<sup>1</sup> The Settlement Agreement  
7 outlined what APS was to include in any application for such authorization to self-build,<sup>2</sup> and  
8 indicated that certain acquisitions by APS would not be considered "self-build" for purposes of  
9 the restriction.<sup>3</sup>

10 The Settlement Agreement also included a term whereby APS was permitted to include  
11 in its rate base, at a significant discount from their construction costs, generation facilities that  
12 had been constructed by its affiliate Pinnacle West Energy Corporation ("PWEC").<sup>4</sup> According  
13 to Decision No. 67744, the Self-Build Moratorium was designed to address the potential anti-  
14 competitive effects that could be associated with including the PWEC assets in APS' rate  
15 base.<sup>5</sup>

16 The Self-Build Moratorium was not meant to be an absolute ban on APS constructing its  
17 own generation facilities through 2014. There were a number of relatively narrow types of  
18 resources that were specifically excluded from the Moratorium (for example, temporary  
19 resources for system reliability and renewable resources).<sup>6</sup> Additionally, the Settlement  
20 Agreement explicitly permitted APS to seek exceptions to the Moratorium. In the event the  
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22 <sup>1</sup> Decision No. 67744, Settlement Agreement at ¶ 74.

23 <sup>2</sup> *Id.* at ¶ 75.

24 <sup>3</sup> *Id.* at ¶ 74. In adopting the Settlement Agreement, the Commission narrowed this exception slightly. See Decision No. 67744 at 25.

<sup>4</sup> Decision No. 67744, Settlement Agreement at ¶¶ 6, 7.

<sup>5</sup> Decision No. 67744 at 25.

<sup>6</sup> Decision No. 67744 at 25 and Settlement Agreement at ¶ 74.

1 wholesale market did not develop adequately, and that APS therefore was not able to meets  
2 its resource needs cost-effectively from that market, APS was given the opportunity to build its  
3 own generation resources. Prior to any such efforts to self-build, however, APS was required  
4 to demonstrate to the Commission that the wholesale market had, in fact, failed to produce  
5 resources that were cost-effective when compared with APS' costs to self-build. The  
6 Settlement Agreement explicitly stated that the Moratorium "shall not be construed as relieving  
7 APS of its existing obligation to prudently acquire generating resources," including seeking the  
8 permitted authorization to self-build.<sup>7</sup>

9 In Docket No. E-01345A-06-0464, APS sought Commission approval to purchase a new  
10 generation resource in APS' Yuma load pocket. The Commission held a hearing in January  
11 2007 and granted approval of APS' request in Decision No. 69400 (March 30, 2007). While the  
12 Commission did hold four days of hearing in that proceeding, it indicated in its Decision that an  
13 evidentiary hearing may not be necessary for every application for authority to self-build, and  
14 the Commission declined to impose specific procedural requirements for any future disputes  
15 regarding the requirements of the Settlement Agreement related to self-building of generation.<sup>8</sup>

16 In 2005, after the Commission approved the Settlement Agreement in Decision No.  
17 67744, APS filed another rate application. That application went to hearing in the Fall of 2006.  
18 While that hearing was underway, Commissioner Hatch-Miller issued a letter in that  
19 proceeding expressing concern that, because of the Self-Build Moratorium, APS may face  
20 challenges in procuring additional power supplies and that volatile natural gas prices and  
21 potential gas supply and delivery constraints might make competitive procurement  
22 problematic.

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23  
24 <sup>7</sup> Decision No. 67744, Settlement Agreement at ¶ 76.  
<sup>8</sup> Decision No. 69400 at 18.

1 Between the conclusion of the 2005 rate case hearing in December 2006 and the Open  
2 Meeting to resolve it in June 2007, the Commission heard the Yuma self-build application and  
3 adopted Decision No. 69400. At the Open Meeting on the 2005 rate case the Commission  
4 discussed an amendment to the Recommended Opinion and Order that would have  
5 streamlined the procedure by which APS could seek an exception to the Self-Build  
6 Moratorium. Ultimately, the Commission instead adopted an amendment that required its  
7 Hearing Division to initiate this proceeding to consider modifying Decision No. 67744 relating  
8 to the self-build option.

9 In December 2007, the Commission adopted Recommended Best Practices for  
10 Procurement ("Best Practices") in Decision No. 70032. While the Best Practices are not, by  
11 their own terms, mandatory,<sup>9</sup> APS has indicated that it fully supports the Best Practices and  
12 recognizes that it is in the Company's best interest to comply with them.<sup>10</sup> APS further  
13 indicated that it does not believe that compliance with the Best Practices, by itself, would not  
14 provide a sufficient basis for the Commission to determine whether APS acted prudently and  
15 the asset should be included in rate base.<sup>11</sup>

## 17 **DISCUSSION**

18 RUCO has not proposed any modifications to the Moratorium, and RUCO would  
19 vigorously oppose an outright prohibition on APS self-building generation. The Settlement  
20 Agreement and Decision No. 67744 established an appropriate balance between reliance on  
21 the wholesale electric market and requiring APS to meet its load by using the most cost-  
22 effective resource—regardless of who owns those resources. RUCO strongly supports the

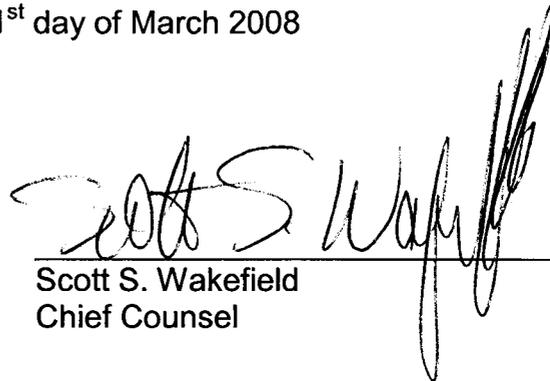
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24 <sup>9</sup> Exh. S-1 at 6.  
<sup>10</sup> Exh. APS-2 at 4.  
<sup>11</sup> Tr. at 98-99.

1 Commission's statement in Decision No. 69400 that APS must be permitted to pursue self-  
2 building generation resources if that is the most prudent option.<sup>12</sup> The obligation that APS has  
3 to seek an exemption from the Self-Build Moratorium if reasonably priced resources are not  
4 available in the wholesale market is the key aspect of the Settlement Agreement that makes  
5 the Self-Build Moratorium, as a whole, appropriate.

6 The opportunity to self-build generation resources is one arrow in the quiver of options  
7 APS has to meet its customers' load. That arrow is essential to provide the opportunity to  
8 acquire the lowest cost mix of resources for the benefit of its customers.<sup>13</sup> The Commission  
9 should leave in place the opportunity for APS to self-build under the conditions outlined in  
10 Decision No. 67744.

11  
12 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March 2008

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Scott S. Wakefield  
Chief Counsel

17 AN ORIGINAL AND THIRTEEN COPIES  
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of March 2008 with:

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<sup>12</sup> See Decision No. 69400 at 17-18.  
<sup>13</sup> Tr. at 174.

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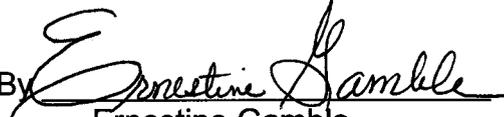
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