

# OPEN MEETING



**ORIGINAL**

**MEMORANDUM  
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414

TO: THE COMMISSION

2008 SEP 25 A 11: 38

Arizona Corporation Commission  
**DOCKETED**

FROM: Utilities Division

AZ CORP COMMISSION  
DOCKET CONTROL

SEP 25 2008

DATE: September 25, 2008

DOCKETED BY 

RE: ARIZONA PUBLIC SERVICE COMPANY - APPLICATION FOR APPROVAL OF BANK OF NEW YORK MELLON AS TRUSTEE FOR PALO VERDE NUCLEAR DECOMMISSIONING TRUST (DOCKET NO. E-01345A-08-0323)

On June 26, 2008, Arizona Public Service Company ("APS") filed with the Arizona Corporation Commission ("Commission") an application seeking approval of Bank of New York Mellon as trustee for the Palo Verde Nuclear decommissioning trust. Commission Decision No. 55931 of April 1988 established this trust and a requirement for Commission approval of the trust manager. The decision included the following orders:

"It is further ordered that Arizona Public Service Company be, and hereby is, authorized and directed to establish to the extent possible, external qualified funds for decommissioning expense for each Palo Verde unit, which shall be under the full and exclusive control of independent trustees, and to make quarterly payments to those funds based on the annual decommissioning expense determined hereinabove, as revised from time to time in accordance with the provisions of A.A.C. R14-2-102."

"It is further ordered that Arizona Public Service Company be, and hereby is, directed to file on or before June 30, 1988, an application for approval of the trustees selected by it to administer the decommissioning funds."

Decision No. 57426 of June 1991 approved Mellon Bank as the Palo Verde decommissioning trustee. On July 1, 2007, Mellon Bank merged with The Bank of New York ("BNY"). Mellon Bank and BNY consolidated to form a merged entity called Bank of New York Mellon ("BNY Mellon"). The Commission does not have regulatory jurisdiction over the merger. BNY Mellon has received all necessary regulatory approvals for the merger, and has completed consolidation of the banks. BNY Mellon has become successor trustee of funds maintained by Mellon Bank. The application explains that the merger has no impact on the Palo Verde decommissioning trust itself, the duties or responsibilities of the trustee, or on APS' relationship with the trustee. The application further explains that BNY Mellon will assume identical liability for the trust and that BNY Mellon has substantially greater financial ability to satisfy that liability as it has more assets and shareholder equity than Mellon Bank. The application reports that as of December 2007 Mellon Bank had roughly \$40 billion in assets and

THE COMMISSION  
September 25, 2008  
Page 2

\$5 billion in equity. It also reports that BNY Mellon's assets were expected to be \$154 billion and \$14 billion in shareholder equity at the time of consolidation.

Staff recommends that the Commission approve BNY Mellon as the trustee for the APS Palo Verde decommissioning trust in order to memorialize Commission authorization of the merged entity, BNY Mellon, as manager of the trust.



Ernest G. Johnson  
Director  
Utilities Division

EGJ:SPI:lhv\WVC

ORIGINATOR: Steve Irvine

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 MIKE GLEASON  
Chairman  
3 WILLIAM A. MUNDELL  
Commissioner  
4 JEFF HATCH-MILLER  
Commissioner  
5 KRISTIN K. MAYES  
Commissioner  
6 GARY PIERCE  
Commissioner

7  
8 IN THE MATTER OF THE APPLICATION )  
OF ARIZONA PUBLIC SERVICE )  
9 COMPANY FOR APPROVAL OF BANK OF )  
NEW YORK MELLON AS TRUSTEE FOR )  
10 PALO VERDE NUCLEAR )  
11 DECOMMISSIONING TRUST )  
12

DOCKET NO. E-01345A-08-0323

DECISION NO. \_\_\_\_\_

ORDER

13 Open Meeting  
October 15 and 16, 2008  
14 Phoenix, Arizona

15 BY THE COMMISSION:

16 FINDINGS OF FACT

17 1. Arizona Public Service Company ("APS") is certificated to provide electric service  
18 as a public service corporation in the State of Arizona.

19 2. On June 26, 2008, APS filed with the Arizona Corporation Commission  
20 ("Commission") an application seeking approval of Bank of New York Mellon as trustee for the  
21 Palo Verde Nuclear decommissioning trust. The trust and a requirement for Commission approval  
22 of the trust manager were established in Commission Decision No. 55931 of April 1988. The  
23 decision included the following orders:

24 "It is further ordered that Arizona Public Service Company be, and hereby is,  
25 authorized and directed to establish to the extent possible, external qualified funds  
26 for decommissioning expense for each Palo Verde unit, which shall be under the  
27 full and exclusive control of independent trustees, and to make quarterly payments  
28 to those funds based on the annual decommissioning expense determined  
hereinabove, as revised from time to time in accordance with the provisions of  
A.C.C. R14-2-102."

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“It is further ordered that Arizona Public Service Company be, and hereby is, directed to file on or before June 30, 1988, an application for approval of the trustees selected by it to administer the decommissioning funds.”

3. Decision No. 57426 of June 1991 approved Mellon Bank as the Palo Verde decommissioning trustee. On July 1, 2007, Mellon Bank merged with The Bank of New York (“BNY”). Mellon Bank and BNY consolidated to form a merged entity called Bank of New York Mellon (“BNY Mellon”). The Commission does not have regulatory jurisdiction over the merger. BNY Mellon has received all necessary regulatory approvals for the merger, and has completed consolidation of the banks. BNY Mellon has become successor trustee of funds maintained by Mellon Bank.

4. The application explains that the merger has no impact on the Palo Verde decommissioning trust itself, the duties or responsibilities of the trustee, or on APS’ relationship with the trustee. The application further explains that BNY Mellon will assume identical liability for the trust and that BNY Mellon has substantially greater financial ability to satisfy that liability as it has more assets and shareholder equity than Mellon Bank. The application reports that as of December 2007 Mellon Bank had roughly \$40 billion in assets and \$5 billion in equity. It also reports that BNY Mellon’s assets were expected to be \$154 billion and \$14 billion in shareholder equity at the time of consolidation.

5. Staff has recommended that the Commission approve BNY Mellon as the trustee for the APS Palo Verde decommissioning trust in order to memorialize Commission authorization of the merged entity, BNY Mellon, as manager of the trust.

CONCLUSIONS OF LAW

1. Arizona Public Service Company is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Arizona Public Service Company and the subject matter of the application.

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3. The Commission, having reviewed the application and Staff's Memorandum dated September 25, 2008, concludes that it is in the public interest to approve BNY Mellon as the trustee for the APS Palo Verde decommissioning trust.

ORDER

IT IS THEREFORE ORDERED that BNY Mellon is approved as the trustee for the APS Palo Verde decommissioning trust.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE 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 this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EGJ:SPI:lm\WVC

1 SERVICE LIST FOR: Arizona Public Service Company  
2 DOCKET NO. E-01345A-08-0323

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