

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
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PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

Interim Executive Director
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AZ CORP COMMISSION
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ORIGINAL

DATE: JUNE 8, 2009
DOCKET NOS: E-01345A-08-0426

TO ALL PARTIES:

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

ARIZONA PUBLIC SERVICE COMPANY
(SALE AND TRANSFER OF ASSETS/DELETE PORTION OF CC&N)

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:

JUNE 17, 2009

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:

JUNE 23, 2009 AND JUNE 24, 2009

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.

Arizona Corporation Commission
DOCKETED

JUN - 8 2009

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

7 IN THE MATTER OF THE SALE AND
8 TRANSITION BY ARIZONA PUBLIC SERVICE
9 COMPANY TO ELECTRICAL DISTRICT NO. 3
10 OF CERTAIN FACILITIES IN PINAL COUNTY
11 PURSUANT TO A.R.S. § 40-285(A) AND TO
12 DELETE PORTIONS OF ITS CERTIFICATE OF
13 CONVENIENCE AND NECESSITY WITHIN
14 PINAL COUNTY.

DOCKET NO. E-01345A-08-0426

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING:

April 2, 2009

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

14 IN ATTENDANCE:

Kristen K. Mayes, Chairman

15 APPEARANCES:

16 Thomas L. Mumaw and Meghan H. Gabel,
17 Pinnacle West Law Department, on behalf of
18 Arizona Public Service Company;

19 John P. Coyle, Duncan & Allen, on behalf of
20 Electrical District No. 3; and

21 Wesley Van Cleve, Staff Attorney Arizona
22 Corporation Commission Legal Division, on
23 behalf of the Arizona Corporation Commission
24 Utilities Division

22 **BY THE COMMISSION:**

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. On August 11, 2008, Arizona Public Service Company ("APS" or "Company") filed
28 an application with the Commission seeking authorization to sell and transfer certain electric

1 transmission and distribution facilities in Pinal County to Electrical District No. 3 ("ED-3" or
2 "District"); and for Commission approval to delete from its Certificate of Convenience and Necessity
3 ("CC&N"), all areas contained within ED-3's and the Ak-Chin Indian Community's ("Ak-Chin")
4 territories.

5 2. On August 13, 2008, ED-3 filed a request to intervene in the proceeding. On
6 September 12, 2008, the Commission granted intervention to ED-3.

7 3. On October 31, 2008, the Commission's Utilities Division ("Staff") notified APS that
8 its application met sufficiency requirements.

9 4. On January 5, 2009, APS and ED-3 filed a copy of their Joint Transition Plan, and
10 requested waiver of A.A.C. R14-2-203(A)(2), and the inclusion of specific language in the Order
11 authorizing the Company's proposed treatment of certain Renewable Energy Standards ("RES") or
12 Demand Side Management ("DSM") projects undertaken by customers affected by the Application.

13 5. By Procedural Order dated January 22, 2009, a Procedural Conference was scheduled
14 for, and subsequently convened on, January 30, 2009, with the purpose of scheduling a hearing and
15 establishing guidelines to govern the proceeding.

16 6. On February 5, 2009, APS filed a proposed form of public notice that had been drafted
17 by APS and ED-5, and reviewed by Staff.

18 7. By Procedural Order dated February 10, 2009, the proposed form of public notice was
19 approved, a schedule for filing testimony was adopted, and the matter was set for hearing on April 2,
20 2009.

21 8. On March 17, 2009, APS filed Affidavits of Publication certifying that the required
22 public notice was published in the *Casa Grande Dispatch* newspaper on March 3, 2009, and in the
23 *Maricopa Monitor* on February 27, 2009. In addition, APS indicated that the public notice was
24 mailed to each customer affected by the transfer and all property owners in the transfer area on March
25 3, 2009.

26 9. On March 18, 2009, Staff filed a Staff Report, recommending approval of the
27 application with conditions.

28 10. On March 27, 2009, APS filed a Response to the Staff Report, indicating APS agrees

1 with each of the recommendations contained in the Staff Report and urging the Commission to adopt
2 them.

3 11. The hearing in this matter convened as scheduled on April 2, 2009, before an
4 authorized Administrated Law Judge. Daniel Froetscher, Vice President of APS' energy delivery
5 business unit testified for APS; David Benedict, ED-3's director of finance services; Kenneth Saline,
6 managing partner of K.R. Saline & Associates; Jerry Smith, manger for K.R. Saline & Associates'
7 transmission and distribution engineering function; and Jeffrey Woner, partner in K.R. Saline &
8 Associates, and manager of rates and finance, testified for ED-3; and Prem Bahl and Alexander Igwe
9 testified on behalf of Staff.

10 12. On May 14, 2009, ED-3 filed late-filed exhibits as directed during the hearing.

11 13. During the course of this proceeding, the Commission received six comments from
12 APS customers that would be affected by the transfer. Customers expressed concerns about their
13 ability to receive RES incentive payments, access to low income tariffs and levelized billing, and
14 concern about the size of the District and its ability to provide customer service and respond to
15 outages.

16 Background – the Parties

17 14. APS is certificated to provide electric service in several counties in Arizona. In Pinal
18 County, APS' CC&N overlaps the service territory of ED-3 and the boundaries of the Ak-Chin.
19 Currently, APS has approximately 1,000,000 customers in Arizona, of which about 3,993 are located
20 within ED-3's service territory

21 15. ED-3 is a municipal corporation organized in 1922 by the Board of Supervisors of
22 Pinal County pursuant to the Electrical District Act, as amended pursuant to A.R.S. §§ 48-1701 to 48-
23 1822. ED-3 distributes electric power and energy to approximately 17,033 customers within its
24 service area. As a municipal corporation, ED-3 is not subject to Commission regulation.

25 16. The Ak-Chin Indian Community is located within both the ED-3 and APS service
26 areas. In 1997, pursuant to Commission approval in Decision No. 60433 (September 27, 1997), Ak-
27 Chin acquired APS' electric facilities within its borders. At that time, the Ak-Chin formed Ak-Chin
28 Energy Services ("ACES") to provide electric service to its citizens. To facilitate the process, Ak-

1 Chin and APS entered into a Maintenance and Construction Agreement and a Service Agreement
2 authorizing APS to act as the "Control Area Operator." These agreements terminated on December
3 31, 2008, and ACES subsequently assumed full responsibility for its operations.

4 17. APS has no customers within the Ak-Chin service area, and states it has no intention
5 of prospecting for new customers within ACES' service territory.

6 Background – Development of Electric Service within the ED-3 Area

7 18. Prior to 1960, APS was the dominant provider of electric service to residential,
8 commercial, industrial and irrigation loads within the ED-3 service area. As a result, APS owned and
9 controlled most of the electrical infrastructure necessary for providing service in the area. At that
10 time, ED-3 primarily served irrigation pumps within its service territory.

11 19. On December 21, 1960, the Commission approved a Power Agreement between APS
12 and ED-3 whereby APS agreed to transfer its irrigation pumping customers to ED-3 and to serve
13 those customers on behalf of the District for a fixed charge. Under the agreement, APS continued to
14 serve its residential, commercial and industrial customers, while serving the irrigation customers on
15 behalf of ED-3.

16 20. In 1961, the Commission authorized APS to sell and lease back certain facilities and
17 infrastructure located within ED-3's service area to ED-3 for the purpose of serving ED-3's irrigation
18 customers. APS and ED-3 entered into a Lease Agreement for APS to lease ED-3's transmission and
19 distribution facilities, and to operate and maintain the electric system within the area. APS and ED-3
20 signed a Leased Power Agreement, whereby APS sold and delivered power over the leased facilities.
21 The Lease Agreement and Leased Power Agreement resulted in APS assuming full operational
22 control over all facilities within ED-3's service area, and APS utilizing the same facilities to serve its
23 customers as well as ED-3's irrigation customers.

24 21. After entering into the agreements in 1961, APS constructed several facilities to serve
25 new non-irrigation customers, ranging from simple pole-mounted transformers with service drops to
26 more extensive overhead and underground distribution systems. These APS-owned facilities radiate
27 from, and are interconnected with, ED-3's facilities and are generally referred to as the "Split Ends."

28 22. The only facilities APS currently owns within the ED-3 service area are the Split

1 Ends, the Sexton Substation and an “inoperable” 69 kV transmission line.¹ APS owns several
2 transmission facilities, substations, easements and other infrastructure within Pinal Count, but outside
3 of ED-3’s service territory, that are not part of this proceeding.

4 23. APS was also the primary provider of electric residential, commercial and irrigation
5 service to customers in the boundaries of Electric District No. 1 of Pinal County (“ED-1”). In 1976,
6 in Decision No. 46926, the Commission authorized APS to sell its electrical distribution facilities to
7 ED-1, and for APS to lease the same facilities from ED-1 (“ED-1 Lease”) for an initial period of 25
8 years. The Commission also authorized APS to sell power, energy and associated services to ED-1,
9 under a Lease Power Agreement. In 1989, ED-1’s operation was consolidated into ED-3’s, and ED-3
10 assumed the operations and contracts of ED-1, including the ED-1 Lease and ED-1 Lease Power
11 Agreement.

12 24. The Lease Agreement between APS and ED-3 expired on October 21, 2001, and ED-
13 3 assumed operational control over its electrical facilities. The Federal Energy Regulatory
14 Commission (“FERC”) issued an opinion on the termination of the agreement, stating that “it is clear
15 from the terms of the Lease Agreement that operational control over ED-3’s transmission system
16 reverted to ED-3 upon termination of that agreement, ED-3 is a transmitting utility and there is no
17 evidence that it cannot properly operate and maintain its transmission system.” APS and ED-3
18 mutually agreed to terminate the ED-1 Lease effective March 29, 2002.

19 25. After it assumed full control over its system in 2001, ED-3 began serving residential,
20 commercial and industrial loads that had previously been served by APS. Since that time, ED-3 has
21 made capital improvements to serve its load, which has grown from 400 irrigation customers to over
22 17,000 residential, commercial and irrigation meters. As a result, the electric system within ED-3’s
23 service area is a mix of ED-3 and APS owned facilities. ED-3 owns the sub-transmission system,
24 distribution substations and most of the area’s distribution system, with APS owning Split Ends, the
25 Sexton Substation and the inoperable 69 kV transmission line.

26 26. In early 2002, FERC requested that APS and ED-3 negotiate the rates, terms and
27

28 ¹ Although the 69 kV line is not operable as a transmission line, it is being utilized as part of the distribution system.

1 conditions of how ED-3 would deliver energy and power to APS' retail loads that were being served
2 through the ED-3 system. On March 1, 2002, APS and ED-3 entered into a Settlement Agreement
3 that: 1) provided for the sale of APS facilities within the ED-3 boundaries to ED-3 (subject to
4 Commission approval); 2) resolved the rates, terms and conditions for transmission services to APS
5 retail loads served via the ED-3 system; and 3) resolved the termination of the ED-1 Lease and
6 provided for the termination of APS' Lease Agreement with ED-1 and ED-3 upon the sale of the
7 specific assets.

8 27. In order to effectuate the 2002 Settlement Agreement, on April 15, 2002, APS filed an
9 application seeking Commission authorization to sell and transfer its assets within the ED-3 service
10 area.² Under the 2002 Settlement Agreement, APS would have sold all of its assets within the
11 District, but would have retained its existing customers as well as the right to prospective customers
12 within the District. Pinnacle West, APS' parent, would have wheeled energy over ED-3's system for
13 delivery to APS' retail customers within the District. After discussions between APS, ED-3 and
14 Staff, it became apparent that the 2002 Settlement Agreement did not go far enough to solve the
15 operative problems of having overlapping providers, and APS voluntarily agreed to withdraw the
16 2002 Application.

17 28. Since 2001, APS and ED-3 have co-existed within the ED-3 service area, with both
18 entities serving all types of customers. Each entity has constructed facilities to serve their respective
19 loads.

20 29. Within the overlap area, customers and developers have their choice of receiving
21 electric service from either APS or ED-3. The result of having overlapping service areas has led to
22 confusion and operational inefficiencies and potential safety weaknesses. When there are outages, it
23 is not always readily apparent which utility should respond, with the result that both entities might be
24 required to dispatch repair crews.³ APS and ED-3 assert that having overlapping responsibilities as
25 provider of last resort has complicated planning infrastructure.

26 The 2007 Supplemental Agreement

27

28 ² Docket No. E-01345A-02-0285.

³ Transcript of 4/2/09 Hearing ("Tr.") at p. 63.

1 30. On September 20, 2007, APS and ED-3 entered into a “Supplemental Agreement to
2 the Implementation of the Settlement Agreement” (the “Supplemental Agreement”) to fully resolve
3 the operational inefficiencies and safety concerns existing within the District as a result of the dual
4 and overlapping operations of APS and ED-3. The Supplemental Agreement provides for: 1) APS to
5 sell portions of its electric distribution system located within or immediately adjacent to the ED-3
6 service area at the net book value of the assets at the time of the transfer; and 2) for APS to
7 discontinue service to current and prospective customers within the proposed ED-3 service area.

8 31. Pursuant to the Supplemental Agreement, ED-3 will become the sole provider of
9 electric service within and around its District. The Supplemental Agreement provides for APS to sell
10 all of its facilities to ED-3, and for the Commission to cancel that portion of APS’ CC&N that
11 overlaps the ED-3 service area. ED-3 will assume full responsibility for the operation and
12 maintenance of all electric infrastructure in the ED-3 service area. APS and ED-3 believe the
13 Supplemental Agreement resolves the complex issues with the intermingled infrastructure, as well as
14 the difficulties associated with separate utilities serving the same territory.

15 32. The legal description of APS’ CC&N area to be deleted is attached hereto as Exhibit
16 A.

17 33. On August 22, 2008, APS mailed a letter to each customer within the affected area,
18 informing them of its application with the Commission. In addition, APS and ED-3 made joint
19 presentations to the City Council of Maricopa on July 15, 2008, and October 21, 2008; and on
20 October 6, 2008, APS mailed a second letter advising each customer within the proposed ED-3
21 service area of two town hall meetings held at Stanfield on October 23, 2008, and Maricopa on
22 October 28, 2008.

23 34. In addition, APS and ED-3 maintain a website that is devoted to educating the public
24 about the application and responding to inquiries directed at APS and ED-3 about the matter. The
25 website has a page devoted to Frequently Asked Questions about the APS/ED-3 sale.

26 35. On January 21, 2009, Ak-Chin responded to APS’ request to cancel its CC&N
27 overlapping the Ak-Chin community. The letter states that the “Ak-Chin Council has voted to
28 indicate to APS and to the Commission its agreement with the request for deletion of Ak-Chin from

1 APS CC&N.”

2 The Transaction

3 Sale of Assets

4 36. APS seeks, *inter alia*, authorization to sell and transfer the Split Ends to ED-3. APS
5 reports that the Split Ends, which were acquired at an original cost of \$19,646,489, had a net book
6 value of \$13,071,499, as of October 2007. The sales price of the Split Ends will be their net book
7 value at the time of the transaction. Thus, the final sales price will not be known until closing.⁴ APS
8 estimated a net gain of \$8,824 from its aggregate sale of Split Ends to ED-3.

9 37. APS contends that the sale will clarify responsibility for operating and maintaining
10 the system, improve the safe operation of the system by defining these responsibilities, eliminate
11 customer confusion resulting from the combined (and convoluted) ownership, and will further the
12 public policy goal of resolving disputes through settlement.

13 38. APS asserts also that if the sale and transfer is not approved, there remains the risk that
14 ED-3 will chose to serve new and existing customers by bypassing the current APS infrastructure and
15 constructing its own duplicative lines, which could cause the Split Ends to be abandoned, and APS
16 ratepayers could be burdened with the related stranded costs as well as the cost of removal. APS
17 contends that because ED-3 owns the majority of assets and serves the majority of customers in the
18 affected area, it makes sense for ED-3 to be the sole provider in the area.

19 39. APS argues further that the proposed sale is consistent with previous Commission
20 orders and is in the public interest.

21 40. APS owns the Sexton Substation which is located at the intersection of Highway 84
22 and Anderson Road in Pinal County. ED-3 owns a 69 kV transmission line that enters and exits the
23 Sexton Substation. APS owns a second 69kV line that extends east from the substation that is
24 currently inoperable as a transmission line, but supports facilities that are used to serve residential
25 and commercial customers.⁵

26 41. APS contends that the sale of the substation and inoperable 69kV line will not hinder
27

28 ⁴ Tr. at p. 29.

⁵ Tr. at p. 75.

1 its ability to serve its customers because the line is not in service and does not serve existing
2 customers. APS states the lines and associated structures only support ED-3's infrastructure, and not
3 APS' operations.

4 42. APS has agreed to sell the Sexton Substation and the related 69kV line to ED-3 at a
5 negotiated sales price of \$100,000. APS acquired the Sexton Substation for \$206,236, and in June
6 2007, the Sexton Substation had a net book value of \$85,448. The inoperable 68 kV line was
7 installed in 1974 at an original cost of \$19,294, and is fully depreciated. Staff states that based on the
8 foregoing, it appears that APS will receive an immaterial gain from the sale of the Sexton Substation
9 and the related 69 kV line.

10 Cancellation of CC&N

11 43. APS and ED-3 believe that cancelling that portion of APS' CC&N that overlaps the
12 ED-3 territory will fully resolve the difficulties associated with two utilities serving the same area.
13 APS further believes that deleting the areas will minimize its reliance on ED-3 for wheeling and
14 interconnection to serve its customers in those areas. APS and ED-3 agree that the deletion will
15 clearly eliminate APS' responsibility for construction, operations and maintenance of electrical
16 infrastructure in the proposed ED-3 service area. APS would cease to be a provider of last resort
17 within ED-3's service area, and ED-3 will assume full responsibility for providing electric service to
18 the affected customers.

19 Staff's Engineering Analysis

20 44. Staff's inquiry to the Commission's Corporations Division confirmed that APS is in
21 good standing.

22 45. Staff's search of the Consumer Service data base identified four opinions in 2008
23 opposing the proposed sale and transfers to ED-3. Staff did not receive any opinions or complaints
24 concerning this matter in 2009.

25 46. The Commission's Engineering Staff finds that the proposed transfer of the Split Ends
26 and the Sexton Substation to ED-3 is appropriate and reasonable from a network and system
27 perspective. Staff notes the APS and ED-3 systems are currently intermingled which creates
28 confusion, prospective safety hazards, operational inefficiencies and duplicity of system maintenance.

1 Staff states that the proposed sale will eliminate the inherent difficulties associated with the two
2 utilities maintaining intermingled facilities, by clearly defining responsibilities for the area's
3 infrastructure. Staff found that because the Sexton Substation and the related inoperable 69 kV line
4 have limited use by APS, the sale of these facilities will not impair APS' ability to serve outside the
5 proposed ED-3 service area. Staff's analysis also indicates that the sale and transfer of the Split Ends
6 will not negatively impact APS' ability to continue to provide reliable service outside the District.
7 Staff also agrees with APS that the proposed sale will avert the prospect of abandonment of these
8 facilities, and the risk of APS incurring significant removal costs. Based on its investigation, Staff
9 concludes that the sale of the Split Ends and the Sexton Substation is in the public interest.

10 47. Staff finds that ED-3's system is capable of serving the load that would be transferred
11 from APS. APS and ED-3 have jointly confirmed that most of the sub-transmission and distribution
12 system currently being employed in serving both utilities' loads in the proposed ED-3 service area is
13 owned, operated and maintained by ED-3. Further, ED-3 has been augmenting its system by
14 engaging in significant capital investment in within its service territory. Staff concludes that ED-3
15 has the technical capacity to serve the current and prospective loads within its proposed service
16 territory.

17 48. Staff notes that with a few notable exceptions, the facilities being transferred to ED-3
18 are dedicated to serving only customers in the transfer area. The exceptions are several areas outside
19 of the ED-3 boundary, including Mobile that will still be served by APS, using the ED-3 system.
20 ED-3 will wheel power for APS to serve the customers that APS will be keeping.

21 49. Ak-Chin currently serves its community through ownership of ACES, which receives
22 operational support form APS. Ak-Chin has indicated its willingness to obtain similar technical
23 support form ED-3, and ED-3 has assured Ak-Chin of the same quality of service previously
24 provided by APS. Staff concludes that deletion of Ak-Chin from APS' CC&N will not impair
25 electric service to Ak-Chin.

26 50. Based on its engineering analysis, Staff concludes that from a technical, safety and
27 reliability stand-point, APS' proposal to sell its Split Ends, Sexton Substation and the related deletion
28 of APS' CC&N overlapping the proposed ED-3 and Ak-Chin service areas is in the public interest.

1 Joint Transition Plan

2 51. The Joint Transition Plan outlines the process for the transfer of APS' customers to
3 ED-3. APS and ED-3 state they are working closely to ensure a smooth and timely transition.

4 52. APS developed a Community Outreach Plan which involved the development of a
5 website⁶ for contacting and educating affected customers and mailing letters with pertinent
6 information to customers as well as organizing the aforementioned town hall meetings.

7 53. APS and ED-3 state that if the Commission approves the application, they will provide
8 affected customers written notice of the approval which will indicate the exact date on which APS'
9 customers will be transferred to ED-3, how APS' final meter reading will be conducted, and
10 information regarding the treatment of customer deposits, line extension advances, and credit or debit
11 balances with APS.

12 54. APS states that the balance of any customer deposits will be applied to the last bill,
13 and any remaining balance will be refunded to the pertinent customer. In the event that the customer
14 has inadequate deposit to pay the last bill, the customer will be appropriately billed for the shortfall.
15 All credit balances will be refunded, while debit balances will be billed. In addition, APS will refund
16 line extension deposits to all eligible customers upon the transfer of assets to ED-3.

17 55. APS states that the proposed notice of approval will provide affected customers with a
18 listing of ED-3's current rates, programs, and deposit and credit policies. The notice will indicate
19 that if the deadline for transfer to ED-3 expires, and an affected customer has not voluntarily
20 transferred to ED-3, such customer will automatically be placed on ED-3's rate that is most
21 comparable to that customer's rate with APS. APS commits that the notice will contain information
22 on how to obtain more information from APS and ED-3, and will advise customers enrolled in
23 special programs offered by APS, such as equalizer and automatic payment to indicate their interest
24 in participating in similar programs offered by ED-3.

25 56. APS will provide ED-3 with all operational information necessary for the transition of
26 its assets and customers to ED-3. APS states that it will transfer to ED-3 the following information:

27
28 ⁶ www.aps.com/ed3.

- 1 (a) Map of the area, including GIS⁷ maps, wall maps, one-line and cabinet detail;
- 2 (b) Right-of-way, survey and easement information;
- 3 (c) Meter locations, routes, and other relevant metering information;
- 4 (d) Location of regulators, capacitor banks, reclosers, switches, and fuses; and
- 5 (e) Equipment records.

6 57. Upon Commission approval of the application, APS states it will be necessary to
7 transfer pertinent customer information to ED-3. For residential customers, such information may
8 include customer name, contact information, identification number, usage pattern, meter number and
9 code, rates and programs, participation in medical monitoring program, and other information
10 necessary for ED-3 to serve the affected customers. For non-residential customers, APS states it may
11 be required to transfer similar information as well as data such as business identification number,
12 federal tax ID, and identities of officers. Because of the sensitive nature of certain personal and
13 business information, ED-3 promises to take commercially reasonable steps to protect and preserve
14 the confidentiality of all customer specific information APS provides, in accordance to ED-3's
15 privacy policy and applicable law.

16 58. APS is concerned that it may be prohibited from providing customer specific
17 information to ED-3 without a waiver from the Commission from the requirements of A.A.C. R14-2-
18 203(A)(2). This rule states that customer specific information cannot be released by a utility
19 "without specific prior written customer authorization unless the information is requested by a law
20 enforcement or other public agency, or is requested by the Commission or its staff, or is reasonably
21 required for legitimate account collection activities, or is necessary to provide safe and reliable
22 service to a customer."

23 59. APS requests that the Commission grant it: (a) a waiver pursuant to A.A.C. R14-2-
24 212(I) from the requirements of A.A.C. R14-2-203(A)(2) for all customers affected by this filing and
25 for the sole purpose of effecting the transaction contemplated herein, or (b) a declaration that such
26 transfer of customer specific information does not require a waiver from A.A.C. R14-2-203(A)(2)

27
28 ⁷ Geographic Information System.

1 since such transfer is “reasonably required for account collection activities” or is “necessary to
2 provide safe and reliable service.”

3 60. Staff agrees with APS and ED-3 that transfer of pertinent customer specific
4 information from APS to ED-3 will be necessary to facilitate seamless transition of affected
5 customers from APS to ED-3. Staff also believes that if APS’ request to transfer customer
6 information is denied in this proceeding, and ED-3 is placed in a position to have to independently
7 obtain the same information from affected customers, the transition may be burdened with costs
8 related to data collection. Based on the fact that customer information will be “necessary to provide
9 safe and reliable service” to the affected customers, Staff concludes that the waiver sought by APS
10 may not be necessary in this proceeding. Staff states further that if the Commission finds that a
11 waiver is required in this instant case, Staff recommends that the Commission grant APS a waiver
12 from the requirements of A.A.C. R14-2-203(A)(2), pursuant to A.A.C. R14-2-212(I).

13 Treatment of Renewable Energy Standards or Demand Side Management Program

14 61. APS anticipates that some customers who might be eligible and have requested
15 participation in Commission approved RES or DSM programs may be transferred to ED-3 prior to
16 completion or their projects. APS suggests that customers whose RES or DSM projects are in the
17 process of being completed prior to transfer to ED-3 should be encouraged to continue such projects
18 and receive the applicable incentives from APS, even after the transfer to ED-3, subject to certain
19 conditions.

20 62. For RES projects, APS proposes that if it has received a customer’s application for
21 incentives under any of the Commission approved programs and the customer has been given
22 reservation for an RES qualifying installation prior to being transferred to ED-3, APS will grant the
23 customers such incentives, contingent upon: (a) the customer completes the requested installation and
24 related interconnection of the requested RES project before or within twelve (12) months from the
25 date of the Commission approves this application; and (b) the Commission Order in this proceeding
26 authorizes APS to continue to pay incentives to APS customers subsequent to being transferred to
27 ED-3, and permits APS to credit such incentives to APS RES distribution generation targets.

28 63. APS proposed that if a customer located within the proposed ED-3 Service Area has

1 applied for an incentive under the Commission approved DSM programs, and the application is
2 pending prior to Commission approval of its application, that the Commission authorize APS to
3 complete the project under the following conditions: (a) the customer completes the requested
4 installation and related interconnection of the requested DSM project before or within twelve (12)
5 months from the date the Commission approves this application; and (b) the Commission Order in
6 this proceeding authorizes APS to continue to pay incentives to APS' customers, subsequent to being
7 transferred to ED-3, and permits APS to recover the related costs under APS' DSM Adjustment
8 Clause and claim the energy savings resulting from such project for all DSM related regulatory
9 requirements.

10 64. Staff states it has reviewed APS' proposal to fulfill its prior commitment to current
11 customers seeking incentives under RES and/or DSM programs. Staff finds that it is reasonable that
12 APS completes pending RES and DSM projects, even after the Commission approves this filing and
13 the affected customers have been transferred to ED-3. Staff believes this proposal will mitigate the
14 concerns expressed by some customers wanting to participate in RES or DSM programs. Further,
15 Staff finds that the two conditions proposed by APS are reasonable. Staff recommends approval of
16 APS' proposed RES and DSM transition plan, contingent upon the two conditions set forth above.

17 65. ED-3 has a Solar Program with incentives that are similar to those offered under APS'
18 renewable programs. ED-3 caps its residential rebates to \$15,000 and its commercial rebates at
19 \$25,000.⁸ ED-3 has indicated that it is in the process of developing DSM programs for its customers.

20 66. APS reports that approximately 190 of its customers within the ED-3 service area are
21 currently enrolled in its Low Income Assistance Programs ("LIAP"), through rate schedules E-3 and
22 E-4. ED-3 does not have an equivalent low income discount. ED-3 has agreed to provide low
23 income discounts to customers who are currently enrolled in the APS LIAP, in amounts equal to the
24 benefit received by such low income customers, under schedules E-3 and E-4.

25 67. Staff finds that ED-3's commitment to hold low income customers harmless if the
26 Commission approves their transfer from APS to ED-3 is reasonable.

27
28 ⁸ Late-filed Ex. ED-3 16.

1 68. ED-3 has agreed to assume all remaining outstanding obligations of APS to its
2 customers, if any.⁹ APS, however, will pay any outstanding line extension refunds.¹⁰

3 69. The District has a legal boundary and a service area boundary. All landowners within
4 its legal boundary, whether they receive service from the District or APS, are assessed for being in
5 the District. District customers located outside the legal boundary do not have voting rights, nor is
6 their property subject to assessment.¹¹

7 70. APS customers transferring to ED-3 will not automatically be subject to District
8 property tax assessments. According to ED-3, any customer currently who is transferred from APS
9 may seek voting rights under the District's Bylaws by voluntarily petitioning to be included within
10 the District's legal boundary. Upon approval, such customers would be subject to property tax
11 assessment for the ED-3's statutory costs.

12 71. ED-3 has committed to treat all customers it serves equally whether they are located
13 within the District's legal boundaries or not. ED-3 testified that currently, it serves customers who
14 are both located within and outside its legal boundaries, and it avows that it does not and will not
15 discriminate against current or prospective customers on any basis, whether or not the customer has
16 voting rights or the property is included in the District. ED-3 indicates it will waive all requirements
17 for establishment of new service, such as customer security deposits and establishment fees, for APS
18 customers transferring to ED-3 under this application. ED-3 will require affected APS customers
19 who become delinquent on payments after transferring to ED-3 to provide a security deposit.

20 72. Staff states it has reviewed the APS/ED-3 Transition Plan and finds that it is
21 reasonable and acceptable. Staff finds that the Transition Plan will facilitate ease of transitioning
22 current APS customers to ED-3.

23 Financial Analysis

24 73. As of June 2008, APS projected a net gain from the sale of its assets to ED-3 that
25 ranged from \$5,728 to \$8,824, after accounting for income tax. APS has requested that because the
26 gain is minimal and immaterial, and consistent with Decision Nos. 60481, 61708 and 69670, the

27 ⁹ Ex ED-4 Jeffrey Woner testimony at p. 7; Tr. at pp. 68-69.

28 ¹⁰ Tr. at p. 68.

¹¹ Tr. at pp 110-111.

1 Commission should authorize it to record the gain and report it as part of its Sale of Utility Property
2 (Net Gains) quarterly report.

3 74. Staff's analysis indicates that APS' projected net gain could increase as accumulated
4 depreciation grows over time, if the agreed-upon sales price remains constant. Staff agrees, however,
5 with APS that the net gains in this proceeding will be immaterial, and further that the standard fifty-
6 fifty sharing of the gain in the disposition of assets should apply in this proceeding. Staff
7 recommends that the Commission approve APS' request to defer customers' share of any gain from
8 the proposed sale of assets, and report such gain as part of its quarterly filing in Sale of Utility
9 Property (Net Gains) quarterly report.

10 75. ED-3 performed a bill impact analysis which indicates that on an annual average basis,
11 under APS' current tariff E-12 (non TOU), a residential customer with an average consumption is
12 billed \$189.87 monthly, while under ED-3's Residential Service-01 (Overhead) tariff, a customer
13 with the same usage would be billed \$189.98 monthly. Under the APS tariff, the average residential
14 customer would receive a monthly bill of \$239.49 during the summer months and \$138.71 during the
15 winter months. Under ED-3's tariff, a residential customer with average usage is billed \$208.32
16 during the summer months and \$171.63 during the winter months.¹²

17 76. For residential customers on the Time of Use tariff under APS' Schedule ET-1, the
18 monthly average bills are \$168.20 on an annual average, \$193.60 during the summer months, and
19 \$142.77 during the winter months. Under ED-3's tariff, Residential Service-01 TOU, the same
20 customer would be billed at \$168.87 on an annual average, \$192.95 during the summer months and
21 \$144.78 during the winter months.

22 77. Staff believed that the customers being transferred from APS to ED-3 under this
23 proposal would experience an immaterial difference in the cost of electric service.

24 Staff's Conclusions and Recommendations

25 78. Staff agrees with APS and ED-3 that intermingling electrical facilities owned and
26 operated by separate utilities within the same service area creates operational difficulties, safety

27
28 ¹² Ex ED-3 15 and Tr. at pp140-142.

1 concerns and confusion amongst customers. Staff finds that the sale of APS' Split Ends, Sexton
2 Substation and the related inoperable 69 kV line will not impair APS' ability to continue to service its
3 customers outside the proposed ED-3 service area. Further, Staff finds that the Transition Plan
4 proposed by APS and ED-3 will minimize any difficulty associated with transferring current APS
5 customers to ED-3. Staff also finds ED-3's pledge to serve its current and prospective customers
6 under the same terms and conditions, to be reasonable and acceptable. More specifically, Staff
7 agrees with ED-3's promise to hold current APS low income customers receiving services under
8 LIAP harmless. Staff finds that ED-3's current rates are comparable to APS' and that affected
9 customers will experience an immaterial bill impact upon transfer to ED-3.

10 79. Staff recommends as follows:

- 11 (a) That the Commission grant APS' request to sell and transfer its Split Ends, Sexton
12 Substation and the related inoperable 69 kV transmission line to ED-3
- 13 (b) That the Commission cancel APS' CC&N overlapping the proposed ED-3 service
14 area.
- 15 (c) That the Commission cancel APS' CC&N overlapping the AK-Chin.
- 16 (d) That if the Commission finds that a waiver is required for APS to transfer specific
17 customer information to ED-3, for the sole purpose of effectuating the transfer of
18 affected customers from APS to ED-3, that the Commission grant APS a waiver
19 from the requirements of A.A.C. R14-2-203(A)(2), pursuant to A.A.C. R14-2-
20 212(I).
- 21 (e) That the Commission authorize APS to complete pending RES projects under the
22 following conditions: (a) the customer completes the requested installation and
23 related interconnection of the requested RES project before or within twelve (12)
24 months from the date the Commission approves this application; and (b) the
25 Commission Order in this proceeding authorizes APS to continue to pay incentives
26 to APS' customers, subsequent to being transferred to ED-3, and permits APS to
27 credit such incentives to APS' RES distribution generation targets.
- 28 (f) That the Commission authorize APS to complete pending DSM projects under the

1 following conditions: (1) the customer completes the requested installation and
 2 related interconnection of the requested DSM project before or within twelve (12)
 3 months from the date the Commission approves this application; and (2) the
 4 Commission Order in this proceeding authorizes APS to continue to pay incentives
 5 to APS' customers, subsequent to being transferred to ED-3, and permits APS to
 6 recover the related costs under APS' Demand Side Management Adjustment
 7 Clause and claim the energy savings resulting from such project for all DSM
 8 related regulatory requirements.

9 (g) That APS file with the Commission's Docket Control, as a compliance item in this
 10 docket, a copy of all documents evidencing the sale and transfer of its assets to
 11 ED-3, no later than 90 days from the close of the transaction;

12 (h) That APS file with the Commission's Docket Control, as a compliance item in its
 13 docket, a report showing the net gain resulting from the sale of its assets to ED-3,
 14 no later than 90 days from the close of the transaction.

15 Analysis and Resolution

16 80. ED-3 has been providing service to the affected area for many years and has the
 17 technical and financial ability to operate the electrical assets and to serve the customers to be
 18 transferred from APS.

19 81. We agree with APS, ED-3 and Staff that the sale and transfer of assets and the deletion
 20 of the portion of APS' CC&N that overlaps the District and Ak-Chin is in the public interest. This
 21 solution resolves a long-standing situation that is rife with operational and safety issues.

22 82. Staff's recommendations are reasonable and should be adopted.

23 83. On balance, we believe that the best resolution of the operational difficulties that have
 24 arisen as a result of the overlapping service areas is to transfer the APS customers to ED-3 as well as
 25 the electrical assets, rather than to grandfather the existing customers as APS customers. To have a
 26 relatively few APS customers in an area where APS does not hold the CC&N would create new
 27 inefficiencies. All parties advocated transferring the customers and the assets. The attraction of
 28 allowing the existing APS customers in the affected area to remain with APS is to give them access

1 (12) months from the date of the application. Arizona Public Service Company shall recover the
2 related costs of such DSM incentives under its Demand Side Management Adjustment Clause and
3 claim the energy savings resulting from such projects for all DSM related regulatory requirements.

4 IT IS FURTHER ORDERED that Arizona Public Service Company shall file with the
5 Commission's Docket Control, as a compliance item in this docket, a copy of all documents
6 evidencing the sale and transfer of its assets to Electrical District No. 3 no later than 90 days from the
7 close of the transaction.

8 IT IS FURTHER ORDERED that Arizona Public Service Company shall file with the
9 Commission's Docket Control, as a compliance item in its docket, a report showing the net gain
10 resulting from the sale of its assets to Electrical District No. 3 no later than 90 days from the close of
11 the transaction.

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IT IS FURTHER ORDERED that Arizona Public Service Company shall mail notice of the terms of this approval to the affected customers no less than 30 days prior to the effective date of the transfer, such notice to be reviewed and approved by Commission Staff.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim 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 _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ARIZONA PUBLIC SERVICE COMPANY

2 DOCKET NO.: E-01345A-08-0426

3

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25 ARIZONA CORPORATION COMMISSION
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Revised Attachment E

10/16/08

**Legal Description of APS's CC&N within Proposed ED-3 Service Area
To Be Deleted**

The described areas illustrate the boundary of the APS CNN.

Township 4 South, Range 2 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 13 to 19, 21, 22, 23, 26, 27, 28, 33, 34, 35.

Township 4 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 13 to 29 and 33 to 36;

EXCEPT the following:

- The SW4 and the S2 of the SE4 of Section 18, and
- The NW4 and the S2 of Section 19, and
- The W2 of the NW4 and the S2 of Section 29, and
- The S2 of the NW4 and the S2 of Section 33.

Township 4 South, Range 4 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 16 to 22, 27 to 34.

EXCEPT the following:

- The E2 of Section 17, and
- The NE4 of Section 20, and
- The N2 of Section 21, and
- The N2 of Section 22.

Township 5 South, Range 2 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 2 to 4, 10, 11, 13 to 17, 20 to 27, 32 to 36.

Township 5 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1, 2, 3, 11, 12, 16 to 21, 25 to 36;

EXCEPT the following:

- The N2 of Section 25, and
- The N2 of Section 26, and
- The N2 of Section 27.

Township 5 South, Range 4 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 3 to 15, 22 to 36 and Tracts 37 to 52;

EXCEPT the following:

- The W2 of Section 15, and
- The W2 of Section 22, and
- The SE4 of Section 24, and
- The E2 of the E2 of Section 25, and
- That portion of the NE4 of Section 25 lying north of the MARICOPA-CASA GRANDE HWY right of way, and
- Those portions of Section 27, 28, 29 and 30 lying north of the following described line:
BEGINNING at the NW corner of Tract 43; Thence North 89°07'55" East 2123.92 feet to the NE corner of Tract 43 also being the NW corner of Tract 42; Thence North 89°56'03" East 2620.70 feet to the NE corner of Tract 42; Thence South 00°02'28" West along the east line of Tract 42 1814.83 feet; Thence North 89°50'01" East 1318.19 feet to a point on the

Revised Attachment E

10/16/08

west line of Tract 53; Thence North 00°01'36" East 1883.45 feet to the NW corner of Tract 53; Thence South 89°05'54" East 5272.86 feet to the NE corner of Tract 53; Thence South 00°07'59" East along the east line of Tract 53 1808.01 feet; Thence South 89°37'54" East 4235.51 feet to a point on the west line of Tract 40; Thence North 00°01'12" West 1861.85 feet along the west line of Tract 40 to the NW corner of Tract 40; Thence North 89°59'58" East 2601.95 feet to the NE corner of Tract 40; Thence North 00°03'58" East 827.35 feet to the N4 corner of Section 27 and **POINT OF TERMINUS**.

Township 5 South, Range 5 East of the Gila and Salt River Meridian, Pinal County, Arizona,
The S2 of the SW4 of the SW4 of Section 31, and

That portion of Section 31 described as follows:

BEGINNING at the NW corner of Section 31; Thence East along the North line of said Section 31 50.00 feet; Thence South on a line parallel with and 50 feet east of the west line of said Section 31 to a point on the North line of the S2 of the SW4 of the SW4 of Section 31, said point also being the **POINT OF TERMINUS**.

Township 6 South, Range 2 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1 to 5, 9 to 16, 22 to 27, 34, 35, 36.

Township 6 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1 to 31, 34, 35, 36.

Township 6 South, Range 4 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1 to 36;

EXCEPT the following:

The E2 of Section 1, and

That portion lying Northeasterly of the following described line:

BEGINNING at the N4 corner of Section 12; Thence South 00°08'22" East along the North-South Mid-Section line of Section 12 657.59 feet to the SW corner of the NW4 of the NW4 of the NE4 of Section 12; Thence South 44°47'51" East to a **POINT OF TERMINUS** on the east line of the SE4 of Section 12.

Township 6 South, Range 5 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 7, 17, 18, 19, 30, 31;

EXCEPT the following:

That portion of Sections 7, 17 and 18 lying Northeasterly of the following described line:

BEGINNING at the S4 corner of Section 17; Thence North 00°50'50" West along the North-South mid Section line of Section 17 1333.11 feet to the NE corner of the SE 4 of the SW4 of Section 17; Thence North 63°40'56" West through Section 17 and Section 18 4472.70 feet; Thence North 44°47'51" West through Sections 18 and 7 to a **POINT OF TERMINUS** on the west line of the SW4 of Section 7.

Township 7 South, Range 2 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1, 10, 11, 12.

Township 7 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1, 5, 6.

Revised Attachment E

10/16/08

Township 7 South, Range 4 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1 to 6, 8 to 17, 23 to 26, 35, 36.

Township 7 South, Range 5 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 6, 7, 9, 10, 15 to 24;

EXCEPT the following:

The W2 of Section 9.

Attachment G

**Legal Description of APS's CC&N within Ak-Chin Lands
To Be Deleted**

The described areas illustrate the boundary of the Ak-Chin Indian Community.

**Township 4 South, Range 2 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 24, 25, 36.**

**Township 4 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 18, 19, 29 TO 33;**

EXCEPT the following:

- The N2 and the N2 of the SE4 of Section 18, and
- The NE4 of Section 19, and
- The NE4 and the E2 of the NW4 of Section 29, and
- The N2 of the NW4 and the NE4 of Section 33.

**Township 5 South, Range 2 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 1, 12.**

**Township 5 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 4 TO 10, 13, 14, 15, 22 TO 27;**

EXCEPT the following:

- The S2 of Section 25, and
- The S2 of Section 26, and
- The S2 of Section 27.

**Township 5 South, Range 4 East of the Gila and Salt River Meridian, Pinal County, Arizona,
All of Sections 15 to 22 and 27 to 30;**

EXCEPT the following:

- The E2 of Section 15, and
- The E2 of Section 22, and

Those portions of Section 27, 28, 29 and 30 lying south of the following described line:
BEGINNING at the NW corner of Tract 43; Thence North 89°07'55" East 2123.92 feet to the NE corner of Tract 43 also being the NW corner of Tract 42; Thence North 89°56'03" East 2620.70 feet to the NE corner of Tract 42; Thence South 00°02'28" West along the east line of Tract 42 1814.83 feet; Thence North 89°50'01" East to a point on the west line of Tract 53 1318.19 feet; Thence North 00°01'36" East 1883.45 feet to the NW corner of Tract 53; Thence South 89°05'54" East 5272.86 feet to the NE corner of Tract 53; Thence South 00°07'59" East 1808.01 feet along the east line of Tract 53; Thence South 89°37'54" East 4235.51 feet to a point on the west line of Tract 40; Thence North 00°01'12" West 1861.85 feet along the west line of Tract 40 to the NW corner of Tract 40; Thence North 89°59'58" East 2601.95 feet to the NE corner of Tract 40; Thence North 00°03'58" East 827.35 feet to the N4 corner of Section 27 and **POINT OF TERMINUS**.

**ARIZONA PUBLIC SERVICE COMPANY
DOCKET NO. E-01345A-08-0426
AREA REQUESTED TO BE DELETED FROM CC&N**



DECISION NO. _____