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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF THE SALE AND
TRANSITION BY ARIZONA PUBLIC
SERVICE COMPANY TO ELECTRICAL
DISTRICT NO. 3 OF CERTAIN ELECTRICAL
FACILITIES IN PINAL COUNTY PURSUANT
TO A.R.S. § 40-285(A) AND FOR DELETION
FROM ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY CERTAIN
AREAS OF PINAL COUNTY.

DOCKET NO. E-01345A-08-0426

**STAFF'S RESPONSE TO PINAL ENERGY
LLC'S MOTION TO INTERVENE**

The Utilities Division of Arizona Corporation Commission ("Staff") hereby objects to the Motion to Intervene that was filed by Pinal Energy LLC ("Pinal Energy") on October 14, 2009.

Pinal Energy claims that it "... only recently became aware of this docket." However, as the Commission is already well aware, both Arizona Public Service Company ("APS") and Electrical District No. 3 ("ED3) provided extensive notice to both the customers directly affected by the proposed transaction, and the community in general.

On August 11, 2008, Arizona Public Service Company ("APS") filed an application with the Arizona Corporation Commission ("Commission") seeking authorization to sell and transfer certain electric transmission and distribution facilities in Pinal County to Electrical District No. 3 ("ED3"). In addition, APS was seeking approval to delete from its Certificate of Convenience and Necessity ("CC&N") all areas contained within ED3's service territory and the Ak-Chin Indian Community (Ak-Chin").

The Administrative Law Judge ("ALJ") issued a procedural order on February 13, 2009 that set forth, among other things, the hearing date, due dates for testimony, dates for intervention, and notice requirements for APS. APS, in compliance with the procedural order, published notice of the application in the Maricopa Monitor, on February 27, 2009, and in the Casa Grande Dispatch on March 3, 2009. APS also mailed this notice to each customer affected by the transfer, and all

1 property owners in the transfer area. Then on August 22, 2008, APS mailed a letter to each of its
2 customers within the affected area again informing them of this application. APS and ED3 also made
3 joint presentations to the City Counsel of Maricopa in July and October of 2008. APS also held two
4 town meetings, in Stanfield on October 23, 2008, and Maricopa on October 28, 2008. APS provided
5 notice of these meetings via direct mailing to customers within the proposed ED3 service area, and
6 publication in the Maricopa Monitor and Casa Grande Dispatch.

7 The other important fact to consider, and one that Pinal Energy readily admits, is that Pinal
8 Energy is not even an APS customer that will be transferred to ED3 as part of this proposed
9 transaction. Although APS, and ED3, may not have provided direct notice to Pinal Energy because it
10 was already an ED3 customer, this transaction was widely publicized in the two area newspapers,
11 through public meetings, and by way of a joint website. So while APS may not have provided direct
12 notice to Pinal Energy, it is difficult to believe that Pinal Energy was not aware of this application
13 until now.

14 Additionally, the procedural order that the ALJ issued in this case clearly indicates that “. . .
15 all motions to intervene must be filed on or before March 18, 2009.” As indicated above, Pinal
16 Energy did not file its motion until October 14, 2009. This is problematic for several reasons. First,
17 this approximately seven months after the deadline set by the Judge. Staff believes this, by itself is
18 sufficient for denying Pinal Energy’s motion. However, what is more troublesome is that a hearing
19 was already held in this matter on April 2, 2009, the ALJ already issued a Recommended Opinion and
20 Order (“ROO”) on June 8, 2009, and this matter already went before the Commission for
21 consideration on June 23, 2009. While the Commission postponed voting on the ROO until a later
22 date, Pinal Energy’s motion is nonetheless too late. Pinal Energy cites to A.A.C. R14-3-105 as the
23 basis for the Commission granting intervention, but A.C.C. R14-3-105(B) clearly reads in part that
24 “Such application shall be served and filed by and applicant at least five days before the proceeding is
25 called for hearing. No application for leave to intervene shall be granted where by so doing the issues
26 therefore presented will be unduly broadened . . .” In this case Pinal Energy is not even one of the
27 APS customer that will be impacted by the proposed transaction. The granting of Pinal Energy’s
28 application to intervene will unduly broaden the issues, and the timing of its application is beyond

1 any recognized deadline set forth in the administrative code or the procedural order that the ALJ
2 issued in this case.

3 Wherefore Staff respectfully requests that the ALJ deny Pinal Energy's Motion to Intervene.

4 RESPECTFULLY SUBMITTED this 22nd day of October, 2009.

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13 Original and thirteen (13) copies
14 of the foregoing were filed this
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