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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF }
ARIZONA PUBLIC SERVICE COMPANY } Docket No. E-01345A-98-0473
FOR APPROVAL OF ITS PLAN FOR }
STRANDED COST RECOVERY }
}

IN THE MATTER OF THE FILING OF }
ARIZONA PUBLIC SERVICE COMPANY }
OF UNBUNDLED TARIFFS PURSUANT } Docket No. E-01345A-97-0773
TO A.C.C. R14-1-1601 ET SEQ. }
}

IN THE MATTER OF COMPETITION IN THE }
PROVISION OF ELECTRIC SERVICES } Docket No. RE-00000C-94-0165
THROUGHOUT THE STATE OF ARIZONA }
}

**COMMENTS OF ENRON CORP.
ON APS'S PROPOSED CODE OF CONDUCT**

On October 28, 1999, Arizona Public Service Company ("APS") filed a proposed Code of Conduct pursuant to the Opinion and Order of the Arizona Corporation Commission ("Commission") in this proceeding, Decision No. 61973. On November 9, 1999, the Hearing Officer issued a procedural order to initiate consideration of the Code of Conduct. Interested parties were invited to provide comments on the APS proposed Code of Conduct by December 6, 1999. Enron Corp., on behalf of its subsidiaries Enron Energy Services Inc. and Enron North America, hereby files its comments on the proposed Code of Conduct.

1. The Proposed Code of Conduct and Rule 14-2-1616.

In its Opinion and Order No. 61969 issued September 29, 1999, the Commission adopted Rule 14-2-1616 as part of the Electric Competition Rules. This Rule is the template by which the proposed Code of Conduct must be evaluated. Subsection B of Rule 14-2-1616 lists nine areas which each Affected Utility's Code of Conduct must address. The required elements of the code of conduct are: procedures to prevent cross-subsidization between the utility and any competitive affiliates; procedures to ensure that the affiliates do not have access to confidential information; guidelines to limit joint employment of personnel by the utility and its affiliate; guidelines governing use of the utility's name or logo by its competitive affiliate; procedures to ensure that the utility does not give its affiliate preferential treatment; policies to eliminate joint advertising, joint marketing or joint sales by a utility and its competitive affiliate; procedures to govern transactions between the utility and its affiliate; policies to prevent either the utility or the affiliate from representing that the affiliation will result in better service; and a complaint procedure.

APS's proposed Code of Conduct does not comply with Rule 14-2-1616B nor is the proposed Code sufficient to prevent the abuses identified in the Commission's rules. APS's Code of Conduct needs to be supplemented to ensure that the Code prevents, as much as is possible, the potential for APS to engage in anticompetitive activities with its affiliated companies. For example, the code must contain procedures to prevent cross-subsidization between the utility and any competitive affiliates and to ensure that the affiliates do not have access to confidential information. The proposed APS Code of Conduct contains no procedures to prevent cross-subsidization. It simply states in

Section 3.1 that APS shall not subsidize the competitive services provided by its Affiliate through any rate or charge for non-competitive electric service. The next section of the proposed code states that APS will segregate its costs and revenues from those of the Affiliate "in a manner sufficient to ensure that there is no subsidization." The Code must explain exactly what the segregation of costs and revenues entails in order to satisfy the Commission requirement that procedures for preventing subsidization be adopted. The last section, 3.3, states that APS will maintain its books of account and records separately from the Affiliate. While this is a move in the right direction, it still is a far cry from the "procedures" required in the Commission's Electric Competition Rules.

The same problem exists with respect to the prohibited access to confidential information. The Commission's rules envision procedures to ensure that the Affiliate does not have access to confidential information. The relevant section of the APS Code of Conduct, Section 5, merely states that (i) APS will provide Affiliates and non-Affiliates with access to distribution service information concurrently and on the same terms and conditions and (ii) that non-public customer-specific information will not be provided unless its release is specifically authorized. Enron has proposed below more detailed provisions dealing with information disclosure, which we feel are more akin to the procedures envisioned in the Commission's Electric Competition Rules.

As noted above, the Commission's Electric Competition Rules require the Affected Utility to adopt guidelines to limit joint employment of personnel by the utility and its affiliate. No such guidelines are contained in APS's proposed Code of Conduct. As set forth below, Enron has proposed provisions which address this subject and which must be incorporated into the APS code for it to comply with Rule 14-2-1616B.

2. Application of the Code of Conduct to the Supply of Generation During the Delay in the Transfer of Generation Assets.

In Decision No. 61973, the Commission directed APS to include in its Code of Conduct “provisions to govern the supply of generation during the two-year period of delay for the transfer of generation assets so that APS doesn’t give itself an undue advantage over the ESPs” (page 12). This requirement was adopted in response to arguments of Enron and others that allowing APS to wait until the end of 2002 to transfer its generation assets out of the utility could extend its market power and give it the ability to act in anticompetitive ways.

APS addressed the Commission directive that it include provisions to govern the supply of generation during the pre-transfer period in Section 4.2.5 of its Code. This section states: “[p]rior to the divestiture of APS generation pursuant to ACC Decision No. 61973 (October 6, 1999), APS generation will not be sold on a discounted basis to Standard Offer customers without the express permission of the ACC.” In Enron’s view, this provision falls far short of extending the kind of protection against undue competitive advantages the Commission intended in Decision No. 61973.

First, this section only addresses the issue of discounting the Standard Offer. It presupposes that APS has the right to request the ability to discount Standard Offer Service. Enron submits that any discounts to Standard Offer pricing are per se anticompetitive and should not be permitted under any circumstance. There is absolutely no legitimate reason why the utility should want or need to discount the Standard Offer rate. The Standard Offer price acts as the de facto ceiling price in the marketplace, as customers will not pay another ESP a higher price if they can take the lower Standard Offer price. Enron has already filed its extensive comments outlining the problem with

the current Standard Offer rate and the resulting shopping credit available to ESPs in this docket. Allowing APS to discount the rate will only exacerbate those problems. Giving APS the ability to discount the Standard Offer price turns this service into a competitive service instead of the default service it is intended to be. Discounting also raises questions about recovering shortfalls in revenues. If APS's rates are properly cost-based, then any discount to those rates will result in revenue shortfalls and undercollections. If APS seeks to recover at some point in time the losses it sustains as a result of discounts, then unfair and improper subsidies result, where Standard Offer or even Direct Access customers may be forced to pay for discounts to others served by Standard Offer service.

While the possibility of Standard Offer discounts are of great concern to the potential energy service providers, there are other very serious issues arising out of APS's continued ownership of its generation assets for an additional two years. The proposed Code of Conduct does not even attempt to address these issues. Under the APS Settlement, all of the generation assets will stay with the utility until the end of 2002. Since APS will continue to be a vertically integrated company, owning and controlling the generation assets in a marketplace that is supposed to be competitive, rules need to be set to direct how APS will manage this generation. For example, how will APS dispose of excess capacity and how will it treat the revenues therefrom? Will APS willingly sell excess capacity in the open marketplace or can it hold back capacity and cause prices to run up as a result? Should APS be required to sell excess power to the highest bidder? Will APS be required to credit the revenues from sales of excess generation to its customers? Will these credits be used for both Standard Offer and Direct Access customers? How will APS manage retail transmission and distribution capacity? Will

APS save for itself the transmission and distribution capacity tied to its generation assets and force other generation off the system? Rules governing these activities during the period prior to APS's transfer of generation to an affiliate must be established at the outset. If not, the very real potential for abuse will act as a strong deterrent to would-be competitors considering entry into an already difficult market.

3. Administering Tariffs.

Section 4.2 covers the administration of APS's tariffs. APS should be required to add language to Section 4.2 which states that it will process all requests for regulated services and requests for information concurrently and in a non-discriminatory manner. This will make it clear that APS cannot give its Affiliate preferential treatment in the form of quicker or more responsive service, which may not otherwise be covered in its tariffs.

4. Promotion, Sales and Advertising of Non-Distribution Services

Section 4.3 of the proposed code addresses promotion, sales and advertising of non-distribution (competitive) services. Section 4.3.1 provides that an APS affiliate (which is defined as an Electric Service Provider, which may not include all APS affiliates) cannot use the APS name or logo in written advertising or promotional material unless the affiliate discloses that it is not the same company as APS and that customers do not have to buy the affiliate's product to continue to receive distribution services. Enron has several additions it would make to this section. First, it should not be limited in scope to written materials. If an APS affiliate representative makes an oral statement to a prospective customer using the APS name, the same disclosures should be required so as to prevent misunderstandings or a sense that the affiliation will in some way inure to the customer's benefit. Secondly, Enron would add two additional points to the mandatory

disclosures. The APS affiliate should be required to state that the affiliation with APS gives it no advantage over other competitors. The APS affiliate should also be required to disclose that the customer is free to choose other energy service providers who will also have access to the APS transmission and distribution grid and that the customer does not have to buy the affiliate's product in order to continue to *receive quality regulated services* from the utility.

5. Access to Information

Section 5 deals with access to information between APS and its affiliates. Enron submits that additional provisions are needed to fully protect against unfair use of competitive information. The three sections which we would incorporate into Section 5 are as follows:

- 5.3 APS shall not disclose any aggregated customer information to any person, including an Affiliate, unless the same information is contemporaneously made available on the same basis to all competitors.
- 5.4 APS shall not disclose any indirect or aggregated customer information acquired from an Energy Service Provider ("ESP"), other than that information that is generally publicly available, without written consent of the ESP from which the information was acquired.
- 5.5 Any person, including an Affiliate, possessing customer information obtained in a manner contrary to this rule shall make no commercial use of the information and shall either destroy such information or return it to APS.

These provisions are necessary to close significant loopholes by which APS might otherwise use to transfer competitively sensitive information to its Affiliate.

6. Transactions with Affiliates

This section as proposed by APS primarily deals with purchases and sales between APS and the Affiliate. It fails to address an area of great concern, which can be the

source of unfair or anticompetitive behavior. This is the ability of the two companies to share services, goods, employees and facilities. Enron proposes the following provisions to deal with these potential abuses:

- 6.5 APS shall not share with an Affiliate employees, goods, services or facilities, except that common costs for essential corporate-wide support services shall be allocated between APS and the Affiliate to reflect the proportional benefit that APS receives from those services compared to the Affiliate receiving those services, neither shall APS make joint purchases of any goods or services associated with the marketing of electricity to customers. Any joint purchases shall be appropriately documented by APS identifying the utility and affiliate portions of such purchases.
- 6.6 Employees shall not be shared between APS and its Affiliate. An employee is considered to be shared if the employee is employed by APS and an Affiliate or if the employee has been temporarily transferred between APS and the Affiliate. Officers and directors shall only be shared if sufficient mechanisms are in place to ensure that such sharing does not result in circumventing any of these rules. Employees moving between APS and its Affiliate shall not use information gained from the earlier employment in a manner inconsistent with this Code of Conduct. Such employees shall not provide information to the new company which it would otherwise be precluded from having if the employee were still employed by the original employer. Employees shall sign a statement that they understand the rules and the attendant consequences for violations thereof.
- 6.7 Employees of APS will be located in office space physically separated from the office space of the employees of the Affiliate. Shared telecommunication, computer and information systems shall be secured with appropriate security devices and procedures to prevent the disclosure of information in a manner inconsistent with this Code of Conduct.
- 6.8 APS may share common costs for essential corporate-wide support services with an Affiliate, and will identify those services for which it intends to share costs in a statement of policy to be filed with the Commission as an addendum to the Code of Conduct. Such costs of essential corporate-wide support services shall be allocated between APS and the Affiliate to reflect the proportional benefit to each.

- 6.9 Utilization of essential corporate-wide support services shall not allow or provide a means for the transfer of customer information in a manner inconsistent with this Code of Conduct, create the opportunity for preferential treatment or anticompetitive practices, lead to customer confusion or create the opportunity for subsidization of the Affiliate.

In order to give the Commission the ability to monitor compliance with these standards, some form of formal reporting requirements for these transactions should be included in the Code of Conduct as well.

7. Dissemination, Education and Compliance

Section 7 of APS's proposed Code of Conduct speaks to its program to inform its employees as to the requirements of the Code of Conduct and of the consequences of failure to comply. Enron submits that APS should also cover in this section the procedures for third parties to contact APS about potential or alleged problems under the Code. APS should be required to maintain a log of complaints and their disposition so that the Commission and other parties can have some measure by which to determine whether the Code is effective and whether APS is taking all the actions that are expected to prevent and address violations. While we would not attempt to dictate what specific procedures APS should adopt for the submission and processing of grievances, we would suggest the following language for the maintenance of a log of complaints.

APS shall maintain a log of complaints, both pending and resolved. This log is subject to Commission review and information in the log shall be maintained for a period of five years. The log will include:

1. The name of the person filing the complaint
2. The date the complaint was filed,
3. The written statement of the complaint, and
4. The date the complaint was resolved, and the resolution of the complaint.

The Code of Conduct should also provide that there will be an independent audit performed one year after the final code goes into effect and at a minimum every third year thereafter. The audit should verify that APS is in compliance with the Code and should be filed 30 days after the end of the first year and every third year thereafter.

WHEREFORE, in light of the foregoing, Enron respectfully submits that the revisions Enron has proposed to the proposed APS Code of Conduct be incorporated into the Code of Conduct.

Dated December 3, 1999

Respectfully submitted,



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