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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

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IN THE MATTER OF MATTER OF THE)
APPLICATION OF ARIZONA PUBLIC)
SERVICE COMPANY FOR APPROVAL OF ITS)
PLAN FOR STRANDED COST RECOVERY)

DOCKET NO. E-01345A-98-0473

IN THE MATTER OF FILING OF ARIZONA)
PUBLIC SERVICE COMPANY OF)
UNBUNDLED TARIFFS PURSUANT TO A.A.C.)
R14-2-1601 ET. SEQ.)

DOCKET NO. E-01345A-97-0773

IN THE MATTER OF COMPETITION IN THE)
PROVISION OF ELECTRIC SERVICES)
THROUGHOUT THE STATE OF ARIZONA)

DOCKET NO. RE-00000C-94-0165

STAFF'S NOTICE OF FILING

Staff of the Arizona Corporation Commission hereby files rebuttal testimony and comments regarding the Code of Conduct filed by Arizona Public Service Company.

RESPECTFULLY SUBMITTED this 18th day of January, 2000.

By: Janet Wagner
Janet Wagner
Terna I. Wolfe
Arizona Corporation Commission
Legal Division
(602) 542-3402

Original and ten copies of the foregoing filed this 18th day of January, 2000, with Docket Control

A copy of the foregoing was mailed this 18th day of January, 2000 to:

All Parties on the Service List for RE-00000C-94-0165

Jan Sell

STATE OF ARIZONA
BEFORE THE ARIZONA CORPORATION COMMISSION

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**REBUTTAL TESTIMONY
OF
GRETCHEN MCCLAIN**

On behalf of:

The Arizona Corporation Commission

Staff

January 18, 2000

La Capra Associates
333 Washington Street
Boston, MA 02108
(617) 557-9100

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- Q. State your name and business address.
- A. My name is Gretchen McClain. My business address is La Capra Associates, 333 Washington Street, Boston, MA 02108.
- Q. Did you file direct testimony in this Docket?
- A. Yes. I filed direct testimony in this Docket on December 6, 1999 addressing the proposed Code of Conduct filed by Arizona Public Service Company (APS or the Company). In my direct testimony, I compared APS' proposed Code with the requirements outlined in the Arizona Electric Competition Rules in R14- 2 -1616. I found that the Company's proposed Code was insufficient to adequately safeguard against anticompetitive behavior. As such, I sponsored the Arizona Corporation Commission Staff's proposed Code of Conduct.
- Q. What is the purpose of your rebuttal testimony in this docket?
- A. In this testimony, I will sponsor Staff's revised Code of Conduct. Staff developed these revisions after discussions with APS and after reviewing materials filed by APS on January 5 and 12, 2000.
- Q. Please summarize your recommendation with respect to the Company's revised Code of Conduct.
- A. I recommend that the Commission reject APS' revised Code of Conduct. Although the proposed APS Code appears to address the criteria for an Arizona Code of Conduct outlined in the Arizona Electric Competition Rules, it is still inadequate. I recommend that the Commission require APS to adopt the Staff's revised Code of Conduct, which will adequately safeguard against anticompetitive behavior.

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STAFF'S REVISED CODE OF CONDUCT

1
2 Q. Have you proposed to change the Staff's Proposed Code of Conduct introduced and
3 described in your direct testimony?

4 A. Yes. After reviewing APS' revised Code, filed on January 5, 2000, and APS' Code of
5 Conduct Policies & Procedures Manual, filed on January 12, 2000, certain modifications
6 to the Staff's proposed Code of Conduct seemed appropriate. A clean version of Staff's
7 revised Code of Conduct is provided in Exhibit 1. A redlined version of Staff's revised
8 Code of Conduct is provided in Exhibit 2.

9 Q. In addition to the review of materials filed by APS, did any other information impact
10 your decision to modify the Staff's proposed Code?

11 A. Yes. I participated in discussions between APS and Staff addressing some of the
12 differences in our proposed Codes of Conduct. In light of that discussion, I feel that the
13 modifications I am proposing are justified.

14 Q. Please identify the sections of Staff's proposed Code that have been modified.

15 A. Material revisions have been made to sections V, VIII, IX, X, XI, and XII.

16 Q. Please describe the changes that you are proposing for Section V and your judgment as to
17 why these changes are reasonable.

18 A. Section V addresses the use of billing inserts for competitive services in APS' bill.
19 Staff's initial position in Section V.C would have restricted APS from including any
20 advertisements for any competitive services on the bill itself or in the billing envelope.
21 The primary motivation behind that restriction was to prevent the Company from
22 engaging in unequal access to APS' bill for advertising purposes. Staff does not object in
23 principle to advertising being included in the bill so long as the Company is bound by
24 specific procedures that will provide equal access to the bill for all third parties. Changes
25 in this section have been made to reflect Staff's position.

26 Q. Please describe the changes that you are proposing for Section VIII and why these
27 changes are justified.

1 A. Section VIII of Staff's proposed Code required the Company to develop a Cost
2 Accounting Manual (CAM) in order to detail how the Company allocates all costs for
3 transactions between APS and its competitive activities. The Company has filed a
4 Policies and Procedures Manual (P&P) on January 12, 2000 that details, among other
5 things, the methods to be used for conducting affiliate transactions. Since the P&P cost
6 accounting section is roughly equivalent to the CAM required by Staff's proposed Code,
7 Staff has modified its proposed Code to allow for an approved P&P instead of a CAM.

8 Q. Should the Company be held in violation of its Code if it violates its P&P?

9 A. The answer depends on the nature of the violation. The P&P covers a wide range of
10 subjects. Not every violation of the P&P would equate to a violation of the Company's
11 Code of Conduct. For example, the P&P contains a section addressing the Company's
12 training policy. Irregularities in training procedures may violate the P&P without
13 violating the Code of Conduct, which is intended to create standards of conduct to
14 prevent anticompetitive behavior. The P&P implements those standards, but the P&P
15 may have other purposes as well. De minimus violations of the P&P or violations that
16 are not relevant to the Code of Conduct should not be viewed as per se violations of the
17 Code of Conduct. In contrast, material violations of P&P provisions that are designed to
18 implement the standards set forth in the Code would likely be considered as violations of
19 the Code of Conduct.

20 Q. Are you recommending that the filed P&P be approved?

21 A. No. The P&P was filed on January 12, 2000, and should be subject to a thorough review.
22 As recommended in my direct testimony, the Director of the Utilities Division should
23 determine whether or not the filed P&P should be approved.

24 Q. Please describe the changes made in Staff's proposed Section IX.

25 A. The reporting requirements in Staff's proposed Code, Section IX, have been modified
26 since Section VIII now requires APS to submit this information on an annual basis to the
27 Director of the Utilities Division for review and approval. Therefore, the Director of the
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1 Utilities Division has the opportunity to address any changes in the P&P which are not
2 appropriate.

3 Q. Please describe the changes made to Section X and the reason for the proposed changes.

4 A. Staff's proposed Code prohibited APS from sharing any joint employees with its
5 competitive electric affiliate, including board members or corporate officers. After a
6 review of the policies and procedures outlined in the P&P with respect to shared
7 employees, Staff has determined that the P&P appears to contain adequate policies and
8 procedures to sufficiently limit the kind of anticompetitive behavior we are concerned
9 about. It therefore seemed reasonable to modify this section of Staff's Code. The Staff's
10 revised Code would now permit APS and its competitive electric affiliate to share
11 Support Officers and Directors. Sharing Support Officers and Directors, such as the CEO
12 and Treasurer, while not ideal, is not unreasonable because they oversee the corporate
13 interests of all Pinnacle West's business activities. However, "Line Officers" should not
14 be allowed to jointly serve APS and its competitive electric affiliate. Separation of "Line
15 Officers" from the competitive electric affiliate is necessary to maintain the separation of
16 the organizations at the operational level.

17 Q. Please describe the arguments regarding Section XI and your recommendation.

18 A. Section XI of the Staff's Code proposed a pricing scheme for the transfers of goods and
19 services between APS and its competitive electric affiliate. This scheme was designed to
20 ensure that regulated ratepayers do not subsidize the competitive affiliate, and that the
21 competitive affiliate does not have any advantages that other competitors do not have as a
22 result of its affiliation with APS. If the Company sells goods and services to an affiliate
23 at a market price which is below its fully allocated price, this will inadvertently cause
24 regulated ratepayers to subsidize the good or service. APS is of the opinion that such a
25 scheme may inadvertently impose a burden on APS' competitive electric affiliate that
26 would be absent from other electric service providers. However, it is up to APS' affiliate
27 to make the decision to acquire the good or service from APS rather than the competitive
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1 market. If the affiliate decides to spend more than the market price to acquire the service
2 from APS, presumably they have found there is actually extra value from doing so.

3
4 To take a specific example, suppose the allocated cost of services provided by one of the
5 officers of both companies was \$50,000, or 50% of that officer's salary. The P&P would
6 be the basis for the determination that this was the appropriate allocated cost. However,
7 the same service could be acquired from an outside firm at a market price of \$30,000. If
8 Section XI allowed APS to transfer the service at the lower market price, it would
9 essentially undo the intent and the instructions in Section VIII, Accounting for Costs.
10 Thus, I recommend that Section C of XI, referring to nontariffed goods and services,
11 remain as proposed in my initial testimony.

12 Q. Please describe changes made to Section XII.

13 A. Section XII defined the transfer terms for assets that were not defined in the Settlement
14 between APS and its competitive electric affiliate. Since the Commission has authority
15 over the ratemaking treatment of transfers of utility assets not covered by the Settlement
16 it is appropriate to eliminate this section of the Code.

17 Q. Are there any additional changes you propose to make to the Staff's proposed Code?

18 A. Yes. Staff's revised Code applies only to competitive electric affiliate(s) of APS
19 providing retail competitive services. I have changed the definition of "competitive
20 electric affiliate" in the Definitions section of the Code to reflect this change.

21 Q. Does this conclude your testimony?

22 A. Yes, it does.
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STAFF'S REVISED CODE OF CONDUCT

I. Definitions

The following terms in the code of conduct shall have the following meanings:

"APS" shall mean Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"Bill" shall mean the billing invoice for noncompetitive services.

"Competitive Activities" shall mean "competitive electric affiliate(s)," "interim competitive activities," or "permitted competitive activities," as those terms are defined in this code of conduct.

"Competitive Electric Affiliate" shall mean any business enterprise related to APS that is also an electric service provider.

"Competitive Services" shall mean all aspects of retail electric services described in A.A.C. R14-2-1601(7).

"Confidential Customer Information" shall mean any customer-specific information obtained by APS as a result of providing noncompetitive services or permitted competitive activities.

"Distribution Service" shall mean those services described in A.A.C. R14-2-1601(14).

"Electric Competition Rules" shall mean A.A.C. R14-2-1601 to -1617 as attached to this code of conduct, including all future amendments and modifications.

"Electric Service Provider" shall mean an entity as described in A.A.C. R14-2-1601(15).

"Extraordinary Circumstance" shall mean any situation which requires APS to act in a manner contrary to this code of conduct in order to protect public interest or safety. Examples include the following: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, to prevent equipment damage, or to prevent disconnection of system elements that could adversely affect reliability or safety; (b) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of a particular fuel; (c) a condition that requires implementation of emergency procedures as defined in the AISA operating protocols or protocols of any successor; or (d) an applicable law, regulation, court order, or regulatory agency directive requiring APS to act in a manner contrary to the code of conduct.

“Interim Competitive Activities” shall mean any competitive services, exclusive of those set forth in A.A.C. R14-2-1615(B), that APS may lawfully provide until December 31, 2002.

“Noncompetitive Services” shall mean those services described in A.A.C. R14-2-1601(29).

“Permitted Competitive Activities” shall mean those competitive services that APS may provide pursuant to A.A.C. R14-2-1615(B), except for any service provided as part of standard offer service.

“Same Terms” shall mean that APS shall provide noncompetitive services to its competitive activities and third parties on the same terms and conditions.

“Third Party” shall mean any electric service provider that does not fall within the definition of “APS” or “competitive activities,” as those terms are defined in this code of conduct.

II. Applicability of Code of Conduct

The following rules shall apply to the conduct of APS and its competitive activities, unless an extraordinary circumstance excuses compliance.

All employees and authorized agents of APS shall conduct their activities in compliance with the requirements of this code of conduct. Failure to conduct activities in compliance with this code of conduct will subject the employee to disciplinary actions as described in Section XIII of this code.

III. Treatment of Similarly Situated Persons

- A. APS shall apply its tariffs in the same manner to similarly situated entities. If a tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its competitive activities and all other third parties and their respective customers.
- B. APS shall process all similar requests for noncompetitive services and for permitted competitive activities, if applicable, in the same manner and in the same time period.
- C. APS shall provide access to distribution service specific information (including information about available distribution capability, transmission access, and curtailments) to its competitive activities and third parties concurrently and under the same terms and conditions.

IV. Use of Confidential Customer Information

- A. APS shall not provide confidential customer information to any party without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any party seeking confidential customer information that such information may be released only after APS receives the customer's written authorization.

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its competitive activities within the bill, APS shall develop a section in its Policies and Procedures Manual to ensure equal access to billing services for third party electric service providers certified by the Arizona Corporation Commission. APS shall include in its bill the amounts due for competitive services to any third party on the same terms, upon request.
- B. This provision shall not prevent APS' competitive activities or any third party from including amounts due for noncompetitive services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' competitive activities or a third party, as applicable, to act as its agent for such purpose.
- C. If APS chooses to insert any advertising or promotional materials for its competitive activities or for any third party's competitive electric services into the envelope for the bill or to print such advertisements on the bill or billing envelope, APS shall develop a section in its Policies and Procedures Manual that would ensure equal access to advertising space in and/or on the bill or billing envelope.

VI. Customer Telephone Calls

Telephone numbers used by APS for provision of noncompetitive services shall be different from those used for its competitive activities.

VII. Prohibition on Suggestion of Utility Advantage

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' competitive activities will receive

preferential treatment in the provision of noncompetitive services or that any other advantage regarding the provision of noncompetitive services will accrue to that consumer.

- B. APS' name or logo shall not be used in written promotional advertising material circulated by a competitive electric affiliate.
- C. APS' personnel shall not specify a preference for any competitive service provided by APS' competitive activities over those of any third party.
- D. APS' personnel shall not specify a preference for any competitive service provided by a third party over any competitive service provided by any other third party.
- E. APS' personnel engaged in the provision of noncompetitive services shall either inform customers who inquire about competitive services that a list of electric service providers is available at no charge from the Arizona Corporation Commission on its website or by telephone, and shall provide the customers with the appropriate Arizona Corporation Commission website address and telephone number, or in the alternative, shall provide such customers with a copy of the current Arizona Corporation Commission list.
- F. APS shall not require that a consumer purchase any competitive service from APS' competitive activities as a condition to providing noncompetitive services.
- G. Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service will not be sold on a discounted basis to Standard Offer customers without the express permission of the Arizona Corporation Commission.

VIII. Accounting for Costs

- A. APS shall not cross-subsidize its competitive activities with rates and charges for noncompetitive services.
- B. All transactions between APS and its competitive activities shall be accounted for in accordance with APS' Policies and Procedures Manual ("P&P"), which shall be developed to describe the cost allocation of all transactions pertaining to APS and its competitive activities in a manner that ensures that there is no subsidization of the competitive activities by the noncompetitive services of APS. The P&P shall be submitted to the Director of the Utilities Division for review and approval. Beginning one year from the date of approval of the P&P, APS shall file annual updates to the P&P, including any and all modifications to

allocation methods and changes in direct and indirect allocators used in the P&P, with the Director of the Utilities Division for review and approval. Any material violation of the P&P which would constitute engagement in anticompetitive behavior shall constitute a violation of this code of conduct.

IX. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis:

- A. A list of all "extraordinary circumstances" excusing APS' compliance with this code of conduct and a report explaining the nature, cause, and duration of each incident.
- B. A report detailing the costs attributable to noncompetitive services, APS' competitive electric affiliate(s), APS' permitted competitive activities, and APS' interim competitive activities, separately for each business activity.

X. Separation Requirements

- A. APS and its competitive activities shall be separate corporate affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999).
- B. APS and its competitive electric affiliate(s) shall keep separate books and records. APS shall keep accounting records that set forth appropriate cost allocations between APS' noncompetitive services, and its competitive activities. All records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, books and records of APS' competitive electric affiliate(s) must be made available for inspection by the Commission to the extent reasonably necessary to determine compliance with this code of conduct.
- C. APS and its competitive electric affiliates shall not jointly employ the same employees. However, APS and its competitive electric affiliate(s) may jointly employ officers and directors for corporate support functions, but APS officers directly responsible for operational matters shall not serve as officers or directors of a competitive electric affiliate. Joint officers shall not utilize information obtained through the provision of noncompetitive service to provide competitive advantage to any APS competitive electric affiliate.

XI. Transfers of Goods and Services

- A. APS' tariffed goods and services shall be provided to third parties and its competitive electric affiliates at the rates and under the terms and conditions set forth in the tariff.
- B. If APS sells nontariffed goods and services that were developed by APS for sale in the market to its competitive electric affiliates, the transfer price shall be the fair market value. Such goods and services shall be provided to APS' competitive electric affiliates and third parties on a non-discriminatory basis.
- C. All other transfers of nontariffed goods and services from APS to APS' competitive electric affiliates shall be at the higher of fully allocated cost or fair market value.
- D. If APS' competitive electric affiliates transfer any goods and services to APS that were developed for sale by the competitive electric affiliate in the market, the transfer price shall be the fair market value.
- E. All other transfers of goods and services from APS' competitive electric affiliates to APS shall be at the lower of fully allocated cost or fair market value.

XII. Joint Marketing

APS and its competitive electric affiliate(s) shall not jointly market their respective services.

XIII. Dissemination, Education, and Compliance

- A. Copies of this code of conduct will be provided to employees of APS and all competitive electric affiliates and those authorized agents of APS and all competitive electric affiliates. A copy of the code of conduct will be maintained on the APS' electronic bulletin board known as Vista Public Folders.
- B. Training on the provisions of the code of conduct and its implementation will be provided to APS employees and authorized agents.
- C. Compliance with the code of conduct is mandatory. An APS employee's or agent's failure or refusal to abide by or to act according to such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.

- D. Questions regarding this code of conduct should be directed to the Business Practices Department. Compliance with this code of conduct will be administered as part of the APS Standards of Conduct program.

XIV. Procedure for Modification of the Code of Conduct

APS may request modifications to its code of conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.

XV. Dispute Resolution

Any person or entity alleging that APS has failed to comply with the code of conduct may file a formal complaint with the Commission in accordance with the procedures established in R14-2-212.

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“Competitive Electric Affiliate” shall mean any business enterprise related to APS that is also an electric service provider ~~or provider of generation services~~.

“Competitive Services” shall mean ~~these~~ all aspects of retail electric services described in A.A.C. R14-2-1601(7).

“Confidential Customer Information” shall mean any customer-specific information obtained by APS as a result of providing noncompetitive services or permitted competitive activities.

“Distribution Service” shall mean those services described in A.A.C. R14-2-1601(14).

“Electric Competition Rules” shall mean A.A.C. R14-2-1601 to -1617 as attached to this code of conduct, including all future amendments and modifications.

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III. Treatment of Similarly Situated Persons

- A. APS shall apply its tariffs in the same manner to similarly situated entities. If a tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its competitive activities and all other third parties and their respective customers.
- B. APS shall process all similar requests for noncompetitive services and for permitted competitive activities, if applicable, in the same manner and in the same time period.
- C. APS shall provide access to distribution service specific information (including information about available distribution capability, transmission access, and curtailments) to its competitive activities and third parties concurrently and under the same terms and conditions.

IV. Use of Confidential Customer Information

- A. APS shall not provide confidential customer information to any party without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any party seeking confidential customer information that such information may be released only after APS receives the customer's written authorization.

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its competitive activities within the bill, APS shall develop a section in its Policies and Procedures Manual to ensure equal access to billing services for ~~provide notice of that determination to all third party electric service providers certified by the Arizona Corporation Commission. The notice shall state how third party billing data may be consolidated with APS' bill.~~ APS shall include in its bill the amounts due for competitive services to any third party on the same terms, upon request.
- B. This provision shall not prevent APS' competitive activities or any third party from including amounts due for noncompetitive services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' competitive activities or a third party, as applicable, to act as its agent for such purpose.
- C. If APS chooses to ~~shall not~~ insert any advertising or promotional materials for ~~its~~ any competitive activities or for any third party's competitive electric services into the envelope for the bill or to print such advertisements on the bill or billing envelope, APS shall develop a section in its Policies and Procedures Manual that would ensure equal access to advertising space in and/or on the bill or billing envelope. ~~nor shall APS print such advertising or promotional materials on the bill.~~

VI. Customer Telephone Calls

Telephone numbers used by APS for provision of noncompetitive services shall be different from those used for its competitive activities.

VII. Prohibition on Suggestion of Utility Advantage

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' competitive activities will receive preferential treatment in the provision of noncompetitive services or that any other advantage regarding the provision of noncompetitive services will accrue to that consumer.
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- C. APS' personnel shall not specify a preference for any competitive service provided by APS' competitive activities over those of any third party.
- D. APS' personnel shall not specify a preference for any competitive service provided by a third party over any competitive service provided by any other third party.
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- F. APS shall not require that a consumer purchase any competitive service from APS' competitive activities as a condition to providing noncompetitive services.
- G. Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service will not be sold on a discounted basis to Standard Offer customers without the express permission of the Arizona Corporation Commission.

VIII. Accounting for Costs

- A. APS shall not cross-subsidize its competitive activities with rates and charges for noncompetitive services.
- B. All transactions between APS and its competitive activities shall be accounted for in accordance with APS' Policies and Procedures Manual Cost Accounting Manual ("P&P CAM"), which shall be developed to describe the cost allocation of all transactions pertaining to APS and its competitive activities in a manner that

ensures that there is no subsidization of the competitive activities by the noncompetitive services of APS. The ~~CAM~~ P&P shall be submitted to the Director of the Utilities Division for review and approval. Beginning one year from the date of approval of the ~~CAM~~ P&P, APS shall file annual updates to the P&P, including any and all modifications to allocation methods and changes in direct and indirect allocators used in the P&P, ~~CAM~~ with the Director of the Utilities Division for review and approval. Any material violation of the P&P which would constitute engagement in anticompetitive behavior ~~CAM~~ shall constitute a violation of this code of conduct.

IX. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis:

A. A list of all "extraordinary circumstances" excusing APS' compliance with this code of conduct and a report explaining the nature, cause, and duration of each incident.

~~B. A report detailing all allocation methods used in the CAM and all modifications to these allocation methods.~~

~~C. A report detailing all of the direct and indirect allocators used in the CAM and all modifications to these allocators, such that a history of allocator evolution may be maintained.~~

B.D. A report detailing the costs attributable to noncompetitive services, APS' competitive electric affiliate(s), APS' permitted competitive activities, and APS' interim competitive activities, separately for each business activity.

X. Separation Requirements

A. APS and its competitive activities shall be separate corporate affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999).

~~B.~~ B. APS and its competitive electric affiliate(s) shall keep separate books and records. APS shall keep accounting records that set forth appropriate cost allocations between APS' noncompetitive services, and its competitive activities. All records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, books and records of APS' competitive electric affiliate(s) must be made available for inspection by the

Commission to the extent reasonably necessary to determine compliance with this code of conduct.

- C. APS and its competitive electric affiliates shall not jointly employ the same employees. However, APS and its competitive electric affiliate(s) may jointly employ officers and directors for corporate support functions, but APS officers directly responsible for operational matters shall not serve as officers or directors of a competitive electric affiliate. Joint officers shall not utilize information obtained through the provision of noncompetitive service to provide competitive advantage to any APS competitive electric affiliate. ~~any board member or corporate officer of APS' holding company may serve in the same capacity with APS or with a competitive electric affiliate, but not both.~~

XI. Transfers of Goods and Services

- A. APS' tariffed goods and services shall be provided to third parties and its competitive electric affiliates at the rates and under the terms and conditions set forth in the tariff.
- B. If APS sells nontariffed goods and services that were developed by APS for sale in the market to its competitive electric affiliates, the transfer price shall be the fair market value. Such goods and services shall be provided to APS' competitive electric affiliates and third parties on a non-discriminatory basis.
- C. All other transfers of nontariffed goods and services from APS to APS' competitive electric affiliates shall be at the higher of fully allocated cost or fair market value.
- D. If APS' competitive electric affiliates sell transfers any goods and services to APS that were developed for sale by the competitive electric affiliate in the market, the transfer price shall be the fair market value.
- E. All other transfers of goods and services from APS' competitive electric affiliates to APS shall be at the lower of fully allocated cost or fair market value.

~~XII. Transfers of Assets~~

- ~~A. Transfers of assets from APS to its competitive activities or contracts for a competitive activity's use of APS' assets, which are not described by Article 4.1 of the Settlement Agreement, shall be at the higher of book value or fair market value.~~

~~B. Transfers of assets from APS' competitive activities to APS or contracts for APS' use of a competitive activity's assets shall be at the lower of book value or fair market value.~~

XII. XIII. Joint Marketing

APS and its competitive electric affiliate(s) shall not jointly market their respective services.

XIV. XIII. Dissemination, Education, and Compliance

- A. Copies of this code of conduct will be provided to employees of APS and all competitive electric affiliates and those authorized agents of APS and all competitive electric affiliates. A copy of the code of conduct will be maintained on the APS' electronic bulletin board known as Vista Public Folders.
- B. Training on the provisions of the code of conduct and its implementation will be provided to APS employees and authorized agents.
- C. Compliance with the code of conduct is mandatory. An APS employee's or agent's failure or refusal to abide by or to act according to such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.
- D. Questions regarding this code of conduct should be directed to the Business Practices Department. Compliance with this code of conduct will be administered as part of the APS Standards of Conduct program.

XV. XIV. Procedure for Modification of the Code of Conduct

APS may request modifications to its code of conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.

XVI. Dispute Resolution

Any person or entity alleging that APS has failed to comply with the code of conduct may file a formal complaint with the Commission in accordance with the procedures established in R14-2-212.