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February 18, 2000

Parties of Record,  
Docket No. E-01345A-98-0473  
Docket No. E-01345A-97-0773  
Docket No. RE-00000C-94-0165

Re: **Joint Proposed Code of Conduct**

Attached please find a copy of a draft Joint Proposed Code of Conduct, as of February 18, 2000. As indicated at the hearing in this matter, APS and Staff met after the hearing regarding revisions to Staff's Exhibit S-3 in an attempt to reach a joint proposal for a Code of Conduct.

The enclosure indicates the changes made to Staff's Exhibit S-3. APS and Staff have previously provided copies of the joint proposal to those parties that participated at the hearing, and to Enron which had filed substantive comments on APS' first proposed Code of Conduct.

APS and Staff intend to file a stipulation and form of order with Docket Control in the morning on Tuesday, February 22, 2000 and request expedited consideration at the March 1, 2000 Open Meeting. If you have any questions, please do not hesitate to call me at (602)382-6271.

Very truly yours,

Snell & Wilmer

[Signature]  
Jeffrey B. Guldner

JBG/lr

Enclosure

cc: Jane Rodda,  
Hearing Officer

791988.1

~~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 non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services or Permitted Competitive Activities.

**"Confidential Information"** means Confidential Customer Information as that term is defined in this Code of Conduct and any other information obtained through the provision of Noncompetitive Services that would provide a competitive advantage to a Competitive Electric Affiliate.

**"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 including all future amendments and modifications ~~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 that~~ 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) any 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~~ means any Competitive ~~S~~ervices, 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~~ means those services described in A.A.C. R14-2-1601(29).

**"Permitted Competitive Activities"** ~~shall~~ means 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.

**"Policies and Procedures" or "P&P"** means those policies and procedures developed by APS to implement this Code of Conduct.

**"Same Terms"** ~~shall~~ means that APS shall provide Noncompetitive Services to its Competitive Activities and Third Parties on the same terms and conditions.

**"Standard Offer Service"** means the bundled provision of retail electric service as described in A.A.C. R14-2-1601(38).

**"Third Party"** ~~shall~~ means any E-lectric 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 Code of Conduct 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~~ comply with ~~the requirements of this Code of Conduct~~. Failure to ~~conduct activities in compliance~~ comply 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 N=oncompetitive S=ervices and for P=ermitted C=ompetitive A=ctivities, if applicable, in the same manner and within the same time period.
- C. APS shall provide access to D=istribution S=ervice--specific information (including information about available distribution capability, transmission access, and curtailments) to its C=ompetitive Electric Affiliates ~~activities~~ and ~~third~~ Third Parties concurrently and under the same terms and conditions.

#### IV. Use of Confidential Customer Information

- A. APS shall not provide C=onfidential C=ustomer I=nformation to any Competitive Electric Affiliate or Third Party ~~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~~ Competitive Electric Affiliate or Third Party seeking C=onfidential C=ustomer I=nformation 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 C=ompetitive A=ctivities within the B=ill, APS shall develop a section in its P=olicies and P=rocedures P&P Manual to ensure equal access to billing services for ~~third party electric service provider~~ Third Parties certified by the Arizona Corporation Commission ~~which shall provide that~~ provide that APS will ~~shall~~ include in its B=ill the amounts due for C=ompetitive S=ervices to any T=hird P=arty on the S=ame T=erms, upon request.
- B. This provision shall not prevent APS' C=ompetitive A=ctivities or any T=hird P=arty from including amounts due for N=oncompetitive S=ervices in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' C=ompetitive A=ctivities or a T=hird P=arty, as applicable, to act as its agent for such purpose.
- C. If APS chooses to ~~insert~~ any advertising or promotional materials for its C=ompetitive A=ctivities or for any T=hird P=arty's C=ompetitive ~~electric S=ervices~~ into the envelope for the B=ill or to print such advertisements on the B=ill or billing envelope, APS shall develop a section in its P=olicies and P=rocedures P&P Manual ~~that would~~ to ensure equal access to advertising space in ~~and~~ or on the B=ill or billing envelope.

## VI. Customer Telephone Calls

Telephone numbers and websites used by APS for provision of N=oncompetitive S=ervices shall be different from those used ~~for~~ by its C=ompetitive E=lectric A=ffiliates.

## 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' C=ompetitive A=ctivities will receive preferential treatment in the provision of N=oncompetitive S=ervices or that any other advantage regarding the provision of N=oncompetitive S=ervices will accrue to that consumer.
- B. ~~APS'~~ The name or logo of APS as a utility distribution company shall not be used in written promotional advertising material circulated by a C=ompetitive E=lectric A=ffiliate.
- C. APS' personnel shall not specify to any customer or potential customer a preference for any C=ompetitive S=ervice provided by APS' C=ompetitive A=ctivities over those of any T= hird P=arty.
- D. APS' personnel shall not specify to any customer or potential customer a preference for any C=ompetitive S=ervice provided by a T= hird P=arty over any C=ompetitive S=ervice provided by any ~~other~~ other T= hird P=arty.
- E. APS' personnel ~~engaged in the provision of providing~~ N=oncompetitive S=ervices shall either inform customers who inquire about C=ompetitive S=ervices that a list of E=lectric S=ervice P=roviders is available at no charge from the Arizona Corporation Commission on its website or by telephone, and upon request shall provide the customers with the appropriate Arizona Corporation Commission website address and telephone number, or ~~in the alternative, shall~~ may provide such customers with a copy of the current Arizona Corporation Commission list of such providers.
- F. APS shall not require that a consumer purchase any e=C=ompetitive S=ervice from APS' C=ompetitive A=ctivities as a condition to providing N=oncompetitive S=ervices.
- G. Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service ~~will~~ shall not be sold on a discounted basis to s=Standard e=Offer Service customers without the express permission of the Arizona Corporation Commission.

## VIII. Accounting for Costs

- A. APS shall not cross-subsidize its-its Competitive Activities with through any rates or and charges for Noncompetitive Services. However, this provision does not require APS to charge more than its authorized tariff rate for any Noncompetitive Service.
- B. All transactions between APS and its Competitive Electric Affiliate 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 Electric Affiliates in a manner that ensures that there is no subsidization of the Competitive Electric Affiliate by the Noncompetitive Services of APS. Any material violation of the P&P which would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.
- C. 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. If the Director of the Utilities Division takes no action on an update to the P&P within 30 days of its filing, the update shall be deemed approved. Any material violation of the P&P which would constitute engagement in anticompetitive behavior shall constitute a violation of this code of conduct.
- D. APS may make and implement non-material changes to the P&P without seeking the prior approval of the Director of the Utilities Division, but shall report such non-material changes in the next annual update to the P&P.

## 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 associated with the costs attributable to all nontariffed transactions between APS noncompetitive services and its APS' Competitive Electric Affiliate(s), with the associated costs reported separately for each business activity and for each transaction.

- C. A report detailing how many non-Standard Offer Service customers were provided metering services or meter reading services pursuant to R14-2-1615.B and how many Electric Service Providers received consolidated billing services from APS pursuant to R14-2-1615.B.

**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 shall not provide Interim Competitive Activities.

B.C. 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 Electric Affiliates. All APS 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 Arizona Corporation Commission to the extent reasonably necessary to determine compliance with this Code of Conduct.

DC. APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that — However, APS and its Competitive Electric Affiliate(s) may jointly employ have common officers and directors for corporate support, oversight, and governance functions, but APS officers directly responsible for operational matters shall not serve as officers or directors of a Competitive Electric Affiliate. Joint Common officers and directors shall not utilize Confidential Information obtained through the provision of Noncompetitive Service to provide a competitive advantage to any APS Competitive Electric Affiliate. Contracts for services accounted for in conformance with Section XI shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS and a Competitive Electric Affiliate.

E. This Code of Conduct shall not prohibit APS and its Competitive Electric Affiliates from purchasing shared services from Pinnacle West Capital Corporation in accordance with the P&P; provided, however, that APS, Pinnacle West, and any Competitive Electric Affiliate shall take appropriate measures to

prevent the transfer of Confidential Information between APS and its Competitive Electric Affiliates via Pinnacle West.

## **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~~ shall be provided to employees of APS and ~~all its~~ eCompetitive Electric Affiliates and those authorized agents of APS and ~~all its~~ eCompetitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct. A copy of the eCode of Conduct ~~will~~ shall be maintained on ~~the APS' electronic bulletin board known as Vista Public Folder~~ Pinnacle West Capital Corporation's intranet.

- B. Training on the provisions of the Code of Conduct and its implementation ~~will~~ shall be provided to all APS employees, as well as to ~~and~~ authorized agents that are likely to be engaged in activities subject to the Code of Conduct.
- 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 Pinnacle West Capital Corporation's Business Practices Department. Compliance with this eCode of eConduct will~~ shall be administered as part of Pinnacle West Capital Corporation's Business Practices Program~~the APS Standards of Conduct program.~~

#### **XIV. Procedure ~~for Modification~~ to Modify ~~of~~ the Code of Conduct**

APS may request modifications to ~~the~~ the 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**

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in A.A.C. 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.