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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

Arizona Corporation Commission
DOCKETED
AZ CORE COMMISSION
UTILITY CONTROL
FEB 22 1999

DOCKETED BY [Signature]

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

) DOCKET NO. RE-00000C-94-0165

STIPULATION OF COMMISSION STAFF AND ARIZONA PUBLIC SERVICE
COMPANY REGARDING CODE OF CONDUCT

Arizona Corporation Commission ("Commission") Staff and Arizona Public Service
Company ("APS") submit the following Stipulation regarding APS' Code of Conduct, which was
required by Decision No. 61973 and A.A.C. R14-2-1616:

1. Following the January 24, 2000 hearing in this matter, APS and Staff commenced
discussions on modifying the proposed Code of Conduct that was submitted by Staff at the
hearing as Exhibit S-3.

2. In these discussions, APS suggested changes to Staff's proposed Code of Conduct.
APS provided copies of these suggested changes to RUCO and the Arizona Transmission
Dependent Utilities Group ("ATDUG")—the two other parties that appeared at the January 24,

1 2000 hearing—and invited comments on APS’ proposed changes to Staff’s proposed Code of
2 Conduct.

3 3. Staff and APS resolved several issues regarding APS’ suggested changes to Staff’s
4 proposed Code of Conduct, resulting in a Joint Proposed Code of Conduct. A copy of the Joint
5 Proposed Code of Conduct showing the changes made from the proposed Code of Conduct
6 submitted at the hearing as Exhibit S-3 is attached hereto as Exhibit A and incorporated by
7 reference. A copy of the Joint Proposed Code of Conduct was then provided to all parties that
8 participated at the hearing or filed comments on the Code of Conduct.

9 4. APS and Staff received and considered comments and questions from RUCO,
10 ATDUG, and Enron Corp. on the Joint Proposed Code of Conduct.¹ RUCO expressed support
11 for the Joint Proposed Code of Conduct. APS and Staff adopted Enron’s suggestion that APS and
12 any competitive retail electric affiliate have separate websites as well as telephone numbers.
13 Enron also recommended that the phrase “without the express permission of the Arizona
14 Corporation Commission” be deleted from Section VII.E. APS and Staff did not accept that
15 recommendation. ATDUG expressed concern that the definition of “Confidential Customer
16 Information” was not sufficiently broad to include protection for ATDUG’s customers. ATDUG
17 suggested that the definition of “Third Party” be broadened. After considering these comments,
18 APS and Staff declined to adopt such changes to the Code of Conduct.

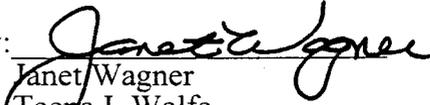
19 5. Staff and APS agree that the Commission may adopt the Joint Proposed Code of
20 Conduct as APS’ Code of Conduct required by Decision No. 61973 and A.A.C. R14-2-1616.

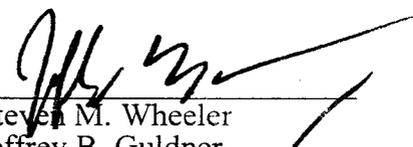
21 6. Additionally, Staff and APS jointly submit the proposed form of order attached as
22 Exhibit B for the consideration of the Hearing Officer in this matter. The proposed form of order
23 includes a clean copy of the Joint Proposed Code of Conduct as an Attachment.

24
25 ¹ RUCO, ATDUG and Enron Corp. filed substantive comments on the various versions of
26 the Code of Conduct filed by APS in this proceeding. New West Energy filed comments
supporting APS’ first proposed Code of Conduct, but did not substantively address the Code of
Conduct. Of these parties, only RUCO and ATDUG appeared at the hearing in this matter.

1 7. APS respectfully requests that the Commission consider this matter at the March 1,
2 2000 Open Meeting. APS advised RUCO, ATDUG, Enron and New West Energy—all the
3 parties that either filed comments in this docket or attended the hearing—of this request. RUCO,
4 Enron, and ATDUG affirmatively advised APS that they did not oppose such expedited
5 consideration; as of the date of this Stipulation, New West Energy has not advised APS that it
6 objects to such expedited consideration.

7 RESPECTFULLY SUBMITTED this 22nd day of February, 2000.

8
9
10 By: 
11 Janet Wagner
12 Teena I. Wolfe
13 Arizona Corporation Commission
14 Legal Division
15 (602)542-3402

16
17
18 By: 
19 Steven M. Wheeler
20 Jeffrey B. Guldner
21 SNELL & WILMER, L.L.P.
22 One Arizona Center
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Attorneys for Arizona Public Service
Company

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Original and ten copies of the foregoing filed this 22 day of February, 2000. with Docket Control

A copy of the foregoing was mailed this 22 day of February, 2000 to:

All parties of record herein.

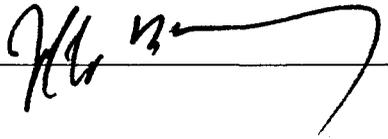
A handwritten signature in black ink, appearing to be "JH" followed by a flourish, is written over a horizontal line.

Exhibit A



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 N-oncompetitive S-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 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.

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

"Same Terms" 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" means 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 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 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 within 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 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 Confidential Customer Information to any Competitive Electric Affiliate or Third Party _____ without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any part~~y~~ Competitive Electric Affiliate or Third 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 ~~P&P Manual~~ P&P Manual to ensure equal access to billing services for ~~third party electric service providers~~ Third Parties certified by the Arizona Corporation Commission which shall _____ provide that APS will _____ 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 e~~ Third Party's e 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 _____ P&P Manual _____ to ensure equal access to advertising space in ~~and/or~~ on the Bill or billing envelope.

VI. Customer Telephone Calls

Telephone numbers and websites used by APS for provision of Noncompetitive Services shall be different from those used ~~by its Competitive Electric Affiliates.~~

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. ~~The name or logo of APS as a utility distribution company~~ shall not be used in written promotional advertising material circulated by a Competitive Electric Affiliate.
- C. APS' personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by APS' Competitive Activities over those of any Third Party.
- D. APS' personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by a Third Party over any Competitive Service provided by any ~~other~~ other Third Party.
- E. APS' personnel ~~engaged in the provision of providing~~ 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 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 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~~ shall not be sold on a discounted basis to ~~Standard Offer Service~~ Standard 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' ~~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.
- 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 ~~all~~ all nontariffed transactions between APS ~~and its~~ and its 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.

~~D-~~ APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that ~~the APS and its Competitive Electric Affiliate(s) may jointly employ~~ APS and its Competitive Electric Affiliate(s) may 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~~ Competitive Electric Affiliates and those authorized agents of APS and ~~all its~~ Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct. A copy of the ~~e~~Code of Conduct ~~will~~ shall be maintained on the ~~APS' electronic bulletin board known as Vista Public Folders~~ 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 ~~—~~ 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 ~~Code of Conduct~~ 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 ~~its~~ 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.

Exhibit B



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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF)
ARIZONA PUBLIC SERVICE COMPANY FOR) DOCKET NO. E-01345A-98-0473
APPROVAL OF ITS PLAN FOR STRANDED)
COST RECOVERY)

IN THE MATTER OF THE FILING OF ARIZONA)
PUBLIC SERVICE COMPANY OF UNBUNDLED) DOCKET NO. E-01345A-97-0773
TARIFFS PURSUANT TO A.A.C. R14-2-1601,)
ET SEQ.)

IN THE MATTER OF THE COMPETITION)
IN THE PROVISION OF ELECTRIC SERVICES) DOCKET NO. RE-00000C-94-0165
THROUGHOUT THE STATE OF ARIZONA)
DECISION NO. _____)

PROPOSED
OPINION AND ORDER

DATE OF HEARING: January 24, 2000
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Jane Rodda
APPEARANCES: Mr. Steven M. Wheeler and Mr. Jeffrey B. Guldner, SNELL & WILMER, L.L.P., on behalf of Arizona Public Service Company.
Mr. Robert S. Lynch on behalf of the Arizona Transmission Dependent Utility Group.
Ms. Jessica Carpenter, Staff Attorney, on behalf of the Residential Utility Consumers Office.
Ms. Janet Wagner, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

1 **BY THE COMMISSION:**

2 On October 6, 1999, the Arizona Corporation Commission ("Commission") issued
3 Decision No. 61973. In Decision No. 61973, the Commission ordered Arizona Public Service
4 Company ("APS") to file, within 30 days, a Code of Conduct for Commission approval. APS
5 thereafter filed with the Commission on October 28, 1999 a proposed Code of Conduct. APS
6 further indicated that it had sent copies of the proposed Code of Conduct to parties of record in
7 Docket Nos. E-01345A-98-0473, E-01345A-97-0773, RE-00000C-94-0165.

8 APS had previously submitted what it termed an "Interim Code of Conduct" on August 6,
9 1999. Without commenting on the merits of the Interim Code of Conduct, it is our intent to
10 replace the Interim Code of Conduct with the Code of Conduct approved herein.

11 On November 9, 1999, a Procedural Order was issued directing interested parties to
12 provide comments on the APS proposed Code of Conduct filed on October 28, 1999. Enron
13 Corp., the Arizona Transmission Dependent Utility Group ("ATDUG"), and Staff all filed
14 comments. Staff's comments were filed in the form of direct testimony and included an
15 alternative proposed Code of Conduct.

16 In accordance with the Procedural Order, APS filed a final proposed Code of Conduct on
17 January 5, 2000. Staff and ATDUG filed comments on APS' final proposed Code of Conduct on
18 January 18, 2000. Staff's comments were filed as rebuttal testimony and included a revised
19 alternative proposed Code of Conduct. In response, APS prefiled the direct testimony of Jack E.
20 Davis on January 21, 2000.

21 The matter came before a duly authorized Hearing Officer of the Commission at the
22 Commission's offices on January 24, 2000. APS and Staff presented evidence at the hearing.
23 Staff submitted as Exhibit S-3 a revised version of its January 18, 2000 proposed Code of
24 Conduct. APS' and Staff's witnesses were subject to or available for cross-examination by all
25 parties attending the hearing. At the conclusion of the hearing, Staff and APS advised the Hearing
26

1 Officer that they intended to continue efforts to reach agreement on a Code of Conduct. The
2 matter was taken under advisement pending submission of a Recommended Opinion and Order to
3 the Commission.

4 On February 22, 2000, Staff and APS jointly submitted a Joint Proposed Code of Conduct
5 that reflected modifications to Staff's alternative proposed Code of Conduct submitted at the
6 hearing as Exhibit S-3. Staff and APS requested that the Joint Proposed Code of Conduct be
7 approved as APS' Code of Conduct required by A.A.C. R14-2-1616. Staff and APS indicated
8 that they had sent copies of the Joint Proposed Code of Conduct to parties of record in the above-
9 captioned matters.

10
11 **FINDINGS OF FACT**

12 1. In Decision No. 61973, the Commission ordered APS to submit a proposed Code
13 of Conduct for Commission approval.

14 2. On October 28, 1999, APS filed a proposed Code of Conduct in accordance with
15 Decision No. 61973.

16 3. On November 9, 1999, the Commission issued a Procedural Order setting a
17 hearing for January 24, 2000, and directing Staff and interested parties to file comments on APS'
18 proposed Code of Conduct by December 6, 1999.

19 4. Enron Corp., ATDUG, and Staff filed comments on APS' October 28, 1999 Code
20 of Conduct.

21 5. Staff recommended that the Commission approve an alternative Code of Conduct
22 submitted with Staff's comments.

23 6. In accordance with the Procedural Order, APS filed a final proposed Code of
24 Conduct on January 5, 2000.
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7. On January 18, 2000, as permitted by the Procedural Order, Staff and ATDUG filed comments on APS' January 5, 2000 Code of Conduct.

8. Staff's comments included a revised alternative Code of Conduct that Staff recommended the Commission approve.

9. On January 24, 2000, a public hearing was held as scheduled.

10. APS and Staff presented evidence regarding how their proposed Codes of Conduct would address anti-competitive activities. Staff submitted a revised proposed Code of Conduct as Exhibit S-3.

11. At the conclusion of the hearing, Staff and APS indicated that they intended to discuss the resolution of differences between Staff's proposed alternative Code of Conduct and APS' proposed Code of Conduct.

12. On February 22, Staff and APS jointly filed a proposed Code of Conduct based on the alternative proposed Code of Conduct submitted by Staff at the hearing. A copy of the Joint Proposed Code of Conduct is attached as Attachment A and incorporated herein by reference.

13. The Joint Proposed Code of Conduct applies to the conduct of APS and its competitive retail electric affiliates.

14. The Joint Proposed Code of Conduct prohibits APS from subsidizing its competitive retail electric affiliates through rates or charges for Noncompetitive Services, as that latter term is defined in A.A.C. R14-2-1601(29).

15. The Joint Proposed Code of Conduct includes provisions governing separation of books and records; the use of confidential information; the joint employment of personnel; the use of APS' name or logo; nondiscrimination; joint advertising, marketing, and sales;

1 representations regarding quality of service; and complaint resolution.

2 16. The Joint Proposed Code of Conduct also addresses procedures governing
3 transactions between APS and a competitive retail electric affiliate.

4 17. The Joint Proposed Code of Conduct requires that APS develop Policies and
5 Procedures to address the implementation of this Code of Conduct, and provides that the Director
6 of the Utilities Division (“Director”) shall approve the Policies and Procedures.
7

8 18. The Joint Proposed Code of Conduct provides that nonsubstantial changes to such
9 Policies and Procedures would become effective pending the Director’s review, while substantial
10 changes to such Policies and Procedures become effective in 30 days if not modified or rejected
11 by the Director.

12 CONCLUSIONS OF LAW

13 1. APS is a public service corporation within the meaning of Article XV, Section 3 of
14 the Arizona Constitution, and an “Affected Utility” within the meaning of A.A.C. R14-2-1601, *et*
15 *seq.*
16

17 2. The Joint Proposed Code of Conduct attached as Attachment A satisfies the
18 requirements of A.A.C. R14-2-1616 and Decision No. 61973 and is supported by the evidence in
19 this proceeding.

20 3. The Policies and Procedures developed to implement the Code of Conduct are to
21 be consistent with the Joint Proposed Code of Conduct and may be amended in accordance with
22 the procedures set forth herein.
23

24 ORDER

25 IT IS THEREFORE ORDERED that the Joint Proposed Code of Conduct attached as
26

A



ALL-STATE LEGAL 800-222-0510 EDS11 RECYCLED

JOINT PROPOSED CODE OF CONDUCT

CODE OF CONDUCT

I. Definitions

“APS” means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

“Bill” means the billing invoice for Noncompetitive Services.

“Competitive Activities” means Competitive Electric Affiliates, Interim Competitive Activities, or Permitted Competitive Activities, as those terms are defined in this Code of Conduct.

“Competitive Electric Affiliate” means any business enterprise related to APS that is also an Electric Service Provider.

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

“Confidential Customer Information” means 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” means those services described in A.A.C. R14-2-1601(14).

“Electric Competition Rules” means A.A.C. R14-2-1601 to -1617 including all future amendments and modifications.

“Electric Service Provider” means an entity as described in A.A.C. R14-2-1601(15).

“Extraordinary Circumstance” means any situation that requires APS to act in a manner contrary to this Code of Conduct 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 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” means 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” means those services described in A.A.C. R14-2-1601(29).

“Permitted Competitive Activities” 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” 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” means 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 Code of Conduct applies to the conduct of APS and its Competitive Activities, unless an Extraordinary Circumstance excuses compliance.

All employees and authorized agents of APS shall comply with this Code of Conduct. Failure to comply with this Code of Conduct will subject the employee to disciplinary actions as described in Section XIII.

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 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 within 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 Electric Affiliates 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 Competitive Electric Affiliate or Third Party without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any Competitive Electric Affiliate or Third 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 P&P to ensure equal access to billing services for Third Parties which shall provide that APS will 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 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 P&P to ensure equal access to advertising space in or on the Bill or billing envelope.

VI. Customer Telephone Calls

Telephone numbers and websites used by APS for provision of Noncompetitive Services shall be different from those used by its Competitive Electric Affiliates.

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. The name or logo of APS as a utility distribution company shall not be used in written promotional advertising material circulated by a Competitive Electric Affiliate.
- C. APS personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by APS' Competitive Activities over those of any Third Party.
- D. APS personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by a Third Party over any Competitive Service provided by any other Third Party.
- E. APS personnel providing 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 upon request shall provide the customers with the appropriate Arizona Corporation Commission website address and telephone number, or 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 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 shall not be sold on a discounted basis to Standard Offer Service customers without the express permission of the Arizona Corporation Commission.

VIII. Accounting for Costs

- A. APS shall not subsidize its Competitive Activities through any rates or 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' 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.
- 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 all nontariffed transactions between APS and its Competitive Electric Affiliates, 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.
- C. APS and its Competitive Electric Affiliates 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 Affiliates must be made available for inspection by the Arizona Corporation Commission to the extent reasonably necessary to determine compliance with this Code of Conduct.

- D. APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that APS and its Competitive Electric Affiliates may have common officers and directors for corporate support, oversight, and governance, but APS officers directly responsible for operational matters shall not serve as officers or directors of a Competitive Electric Affiliate. Common officers and directors shall not utilize Confidential Information obtained through the provision of Noncompetitive Service to provide a competitive advantage to a 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 Affiliates shall not jointly market their respective services.

XIII. Dissemination, Education, and Compliance

- A. Copies of this Code of Conduct shall be provided to employees of APS and its Competitive Electric Affiliates and those authorized agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct. A copy of the Code of Conduct shall be maintained on Pinnacle West Capital Corporation's intranet.
- B. Training on the provisions of the Code of Conduct and its implementation shall be provided to all APS employees, as well as to 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 Pinnacle West Capital Corporation's Business Practices Department. Compliance with this Code of Conduct shall be administered as part of Pinnacle West Capital Corporation's Business Practices Program.

XIV. Procedure to Modify the Code of Conduct

APS may request modifications to 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. R14-2-212.