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AZ CORP COMMISSION
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March 10, 2000

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ORIGINAL

Arizona Corporation Commission

PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
SALT LAKE CITY, UTAH

Re: **Potential Modification to Joint Proposed Code of Conduct**

Dear Bob:

As I noted in our telephone discussion last Wednesday, I reviewed your clients' Exceptions to the recommended order on APS' Code of Conduct, as well as your February 24, 2000 Memorandum explaining your clients' concerns with the Code of Conduct.

APS appreciates the opportunity to consider your clients' concerns, and the proposal below addresses the issue originally raised in your February 24, 2000 Memorandum concerning confidential customer information. Of course, Staff will also have to agree to any proposed change to the Code of Conduct.

Your February 24, 2000 Memorandum expressed concern about protecting the disclosure of customer-specific information that APS may obtain from your clients' customers. You suggested that the Code of Conduct could be construed to not address such information, and recommended adding the clause "or any market participant" to the definition of "Third Party." In your Exceptions, you clarified that this addition to the term "Third Party" was also intended to expand the scope of the Code of Conduct to encompass your clients in areas other than the protection of confidential customer information.

APS, however, disagrees with your suggestion to broaden the definition of "Third Party" in a way that could be construed to expand the scope of APS' obligations—and the Commission's jurisdiction—to unregulated electricity suppliers or wholesale customers of APS. APS' obligations towards "Third Parties" as defined in the Code of Conduct are properly directed at certificated Electric Service Providers in accordance with the Electric Competition Rules.

Additionally, because there is disagreement on the extent to which certain entities may lawfully provide competitive retail electric services in Arizona, broadening obligations in the Code of Conduct as you have suggested could arguably extend substantive rights in a manner that APS believes is contrary to the law.

Robert S. Lynch, Esq.
March 10, 2000
Page 2

In any event, APS does not believe that broadening the term "Third Party" will ultimately resolve the confidentiality issue that you identified in your February 24, 2000 Memorandum. For example, modifying that term does not alter the definition of Confidential Customer Information. Instead, with respect to Confidential Customer Information in Section IV, it will merely include your clients in the group to which APS could not disclose such information without written authorization.

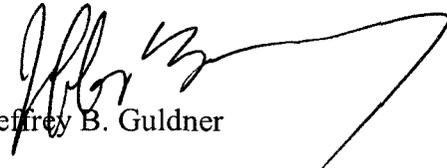
As an alternative to your suggestion, APS would consider modifying the definition of Confidential Customer Information as follows, if that would eliminate your concerns over the Joint Proposed Code of Conduct:

"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 Customer Information also includes non-public customer-specific information obtained by APS from customers of special districts and public power entities on behalf of such special districts and public power entities.

Please let me know what you think.

Very truly yours,

Snell & Wilmer


Jeffrey B. Guldner

JBG/lr

cc: Janet Wagner, Esq.
Docket Control
Parties of Record to
Docket No. RE-00000C-94-0165