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ARIZONA CORPORATION COMMISSION

September 20, 1999

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Commissioner Carl Kunasek
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

SEP 20 1999

RE: Docket No. E-01345A-98-0473

DOCKETED BY

Dear Commissioner Kunasek:

I have received a copy of your letters to Mr. Bill Post of Arizona Public Service ("APS") dated September 9, 1999 and All Parties of Record dated September 16, 1999 respectively. The contents of both letters has caused great concern for many of the parties involved in this docket; concerns which I believe are well-founded in light of the statements contained within them.

In your September 9, 1999 letter to Mr. Bill Post, you specifically ask him to, "identify the areas of concern [related to the settlement agreement] and make recommendations to eliminate those portions of the settlement that could negatively impact Pinnacle West and its consumers going forward." Essentially, you have asked the CEO of Pinnacle West (the parent corporation of APS) – whose subsidiary has a settlement proposal pending before this Commission *and which requires a vote of this Commission* – to recommended changes to that proposal which can have a positive effect on Pinnacle West stock. The procedural aspect of opening the record for further comment from the primary applicant and ignoring the numerous other stakeholders in this matter is not only highly unusual, but grossly unfair.

Is our goal in restructuring to foster a competitive market for electric generation, or is it to do whatever is necessary to protect an affected utility's parent corporation's stock? If it is the latter, then I suggest the best way to achieve this goal is to allow APS to maintain its monopoly.

In an effort to "clarify the purpose" of your September 9, 1999 letter, you wrote to all parties on September 16, 1999. However, I find the statements contained in your second letter to create more confusion than clarity. You state, "First, I have no intentions in changing the substantive provisions of a negotiated settlement." If this is true, then what was the purpose of the September 9, 1999 letter?

Your statement contained in the third paragraph of your September 16, 1999, letter causes me even more concern. You state, "I gave a commitment to all parties in the deregulation process that I would support a negotiated agreement between affected utilities and its customers, provided the customers were well represented in the negotiations. That I believe has occurred." This last statement clearly represents to me – and potentially other parties – that you have already prejudged this matter in favor of the APS settlement proposal.

You state that you gave a commitment to all parties that if your two conditions were met, you would support any resulting agreement. These two conditions are 1) the affected utility negotiates a settlement agreement with its customers, and 2) customers were well represented in the negotiations. When you indicate, "That I believe has occurred," the operative effect is that you have already decided to vote in favor of the proposal.

With respect to the negotiated agreement, you should be aware that many important parties were missing from the negotiations, including, but not limited to; Commission staff, as well as Electric Service Providers ("ESP") without which robust competition cannot take place. The appearance that you have prejudged this matter is further evidenced by your September 17, 1999 letter to Mr. Larry Robertson, counsel for Enron Corp. To state that, "I would support modifications only if supported by the record *and by those who were in support of the settlement filed earlier with this Commission*" suggests that you are unwilling to consider modifications from all non-signators (and non-supporters) to the proposed agreement during Open Meeting. Furthermore, while you reassure Mr. Robertson that, "No where in my letter [September 16, 1999] do I promise an outcome," with respect to the proposed settlement, you have promised a favorable vote.

One main ingredient in any competitive market is actual competitors, and the fact that not one ESP supports this proposed agreement should be cause for some alarm with the Commission. But your message is clear to the competitors of APS – you do not even want to hear what ESPs have to say about a proposed settlement which they were not allowed to participate in negotiating.

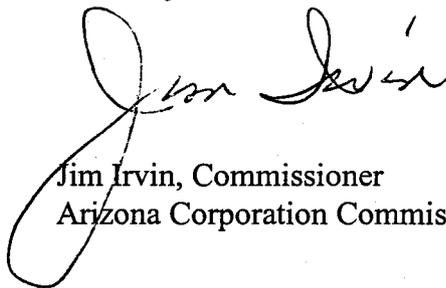
Although I agree that large industrial and commercial customers were well represented during the negotiations (AECC – Arizonan for Electric Choice and Competition), I cannot say the same is true for residential customers. During the APS settlement hearing, Mr. Greg Patterson (then Director of the Residential Utility Consumer Organization and party to the agreement) testified that RUCO did not conduct any study or analysis of the proposal. Additionally, all information furnished to RUCO in support of the benefits of the proposal originated from APS and AECC (representing large industrial consumers). I will provide your office with this evidence if you have not yet read the record.

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Carl, a point of information I will pass on to you – I have heard rumors to the effect that members of the Kunasek family own shares of Pinnacle West stock. I hope these are just rumors and nothing more.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Irvin". The signature is written in black ink and is positioned above the typed name and title.

Jim Irvin, Commissioner
Arizona Corporation Commission

Cc: Commissioner William Mundell
Paul Bullis
Deborah Scott
Docket Control
All Parties of Record.