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7 Attorneys for Western Resource Advocates
8 and Environmental Defense Fund

9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10 GARY PIERCE, CHAIRMAN
11 BOB STUMP
12 SANDRA D. KENNEDY
13 PAUL NEWMAN
14 BRENDA BURNS

15 IN THE MATTER OF THE APPLICATION OF
16 ARIZONA PUBLIC SERVICE COMPANY FOR
17 AUTHORIZATION FOR THE PURCHASE OF
18 GENERATING ASSETS FROM SOUTHERN
19 CALIFORNIA EDISON AND FOR AN
20 ACCOUNTING ORDER.

Docket No. E-01345A-10-0474

**REPLY BRIEF OF WESTERN
RESOURCE ADVOCATES AND
ENVIRONMENTAL DEFENSE
FUND**

21 Western Resource Advocates (“WRA”) and Environmental Defense Fund
22 (“EDF”) submit the following reply brief.

23 This brief addresses three issues raised by the parties in their initial briefs – (1)
24 whether the RFP process proposed by the Arizona Competitive Power Alliance (ACPA)
25 is necessary and useful, (2) how the risks of coal-fired generation can best be managed,
and (3) whether requiring APS to delay the closing date of the APS-SCE agreement is in
the public interest.

Arizona Corporation Commission

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1 **I. THE RFP PROCESS RECOMMENDED BY ACPA IS NEITHER**
2 **NECESSARY NOR USEFUL**

3 **A. APS was not required to issue an RFP.**

4 The resource planning rules indicate that a load-serving entity may acquire energy
5 and capacity through bilateral contracts with non-affiliated entities (R14-2-705(A)(4))
6 and that a load-serving entity must use an RFP (request for proposals) process unless,
7 among other reasons, the transaction presents a genuine, unanticipated opportunity to
8 acquire a power supply resource at a clear and significant discount, compared to the cost
9 of acquiring new generating facilities, and provides unique value to the entity's
10 customers (R14-2-705(B)(5)). The APS-SCE transaction is a genuine, unanticipated
11 opportunity to acquire a power supply resource at a clear and significant discount that
12 provides unique value to APS' customers.

- 13 1. APS' acquisition of SCE's share of Units 4 and 5 is **genuine** – the
14 agreement between APS and SCE is evidence of that. Both parties have
15 long experience in the electric power industry and can reasonably be
16 expected to follow through on their agreement if the underlying conditions,
17 specified in the agreement, are met.
- 18 2. The opportunity for APS to acquire SCE's share of Four Corners Units 4
19 and 5 was **unanticipated**. Staff correctly notes (Closing Brief at 7) that
20 APS had no control over what SCE did with its share of Units 4 and 5.
21 While APS may have known that SCE would have to do something about
22 its Four Corners coal units in response to California's Emissions
23 Performance Standard, APS could not have prudently made commitments
24 until it knew specifically what SCE was planning to do. SCE did not
25 formally indicate that it would withdraw from Units 4 and 5 until December
2009 (APS Initial Brief at 24). Moreover, SCE did not have a final

1 determination from the California Public Utilities Commission until
2 October 2010 that it would not be able to make further life extending
3 investments in Four Corners Units 4 and 5 (Furrey direct testimony at 18).¹

- 4 3. WRA and APS have demonstrated that the transaction and early retirement
5 of Units 1-3 result in a **significant discount and provide unique and**
6 **valuable environmental benefits** that continuing to operate Units 1-3
7 would not provide and that purchasing from the wholesale market would
8 not provide (Berry testimony at 3-8 and Exhibits DB-2 and DB-3; Dinkel
9 testimony at 3-10; Schiavoni testimony at 8).

10 ACPA's argument (Initial Brief at 17) that paragraph 77 of the Settlement
11 Agreement contained in Decision No. 67744 requires APS to first conduct a competitive
12 solicitation before negotiating a bilateral agreement misreads the paragraph.² All the
13 paragraph says is that if APS issues an RFP it may still negotiate a bilateral contract.

14 **B. Issuing an RFP prior to 2010 would have been ineffective.**

15 ACPA implies that APS should have issued an RFP as early as 2006 because SCE
16 would have to terminate its participation in Units 4 and 5 due to the California Emissions
17 Performance Standard (ACPA Initial Brief at 7-8, 14). In order to issue a productive
18 RFP, APS would have to know what it wants to purchase. Until SCE determined
19 whether to try to sell its share of Four Corners Units 4 and 5 or simply allow its
20 participation in those units to expire in 2016, and until APS' circumstances were well
21 understood, APS could not be expected to commit to new resources (APS Initial Brief at

22 ¹ Developing a contract takes time, especially a contract with all the complexities of the APS-
23 SCE contract. See Staff Closing Brief at 7. The fact that it took months to prepare a contract
24 does not mean that the opportunity to acquire SCE's share of Units 4 and 5 was anticipated.

25 ² Paragraph 77 states: "The issuance of any RFP or the conduct of any other competitive
solicitation in the future shall not, in and of itself, preclude APS from negotiating bilateral
agreements with non-affiliated parties."

1 23-24). An RFP issued before December 2009, as proposed by ACPA at 14, would not
2 have been useful to APS or potential bidders because APS would not have known what it
3 wanted.

4 **C. Issuing an RFP today is of no benefit to ratepayers.**

5 The Arizona Competitive Power Alliance argues that APS' request for
6 authorization to proceed with the acquisition of SCE's interest in Units 4 and 5 should be
7 stayed pending APS' conduct of an appropriate form of RFP soliciting proposals from the
8 competitive wholesale market for generation capacity approximately equivalent to SCE's
9 interest in Units 4 and 5 (ACPA Initial Brief, p. 3). Based on its analysis and APS'
10 testimony, WRA believes that this effort would not produce useful results and may even
11 jeopardize the substantial economic and environmental benefits of APS' proposal. APS's
12 Initial Brief (at 40-42) also addresses this issue.

13 The evidence provided by APS and WRA in this hearing strongly indicates that no
14 credible proposal from the wholesale market could result in a lower price than the APS-
15 SCE transaction and guarantee significant environmental improvements. **ACPA**
16 **presented no evidence that alternative resources would be less costly and result in**
17 **greater environmental benefits.** Instead, ACPA would have the Commission believe
18 that a bidding process will cause a lower cost bid to miraculously appear. Bidders know
19 the price they have to beat and they could not credibly provide natural-gas fired resources
20 at a competitive price. They would have to expect gas prices to be as low as they have
21 been over the past 15 years for the entire period of service in order to be competitive
22 (Berry, direct testimony, p. 7). Serious suppliers would not waste their time and expend
23 resources to prepare what they know will be a losing bid (APS Initial Brief at 40-42) .

24 ACPA tempts the Commission with the possibility that an investor like Warren
25 Buffet will "swoop" in to buy SCE's share of Four Corners Units 4 and 5 (ACPA Initial

1 Brief, p. 19). First of all, if any swooping occurs, it will have to be at the behest of SCE
2 who is not subject to the jurisdiction of this Commission. If SCE were to market its share
3 of Units 4 and 5, the early retirement of Units 1-3 would be in doubt and APS might
4 continue to operate Units 1-3, thereby destroying most of the environmental value of
5 APS' proposal which includes the early retirement of Units 1-3. Moreover, it is not
6 realistic to expect investors to acquire SCE's share of Units 4 and 5 -- who would they
7 sell power to given the extremely slow growth in demand for electricity, the absence of
8 interest in acquiring more coal generation by the other participants in the Four Corners
9 power plant, and the limited market access for the power using available transmission?
10 APS addresses these types of issues in its Initial Brief at 9-10.

11 Further, ACPA (Initial Brief at 22) states that APS has not fully incorporated
12 environmental regulatory costs into its analysis that presumably would be considered
13 through a bidding process.³ WRA's analysis includes the costs of complying with
14 environmental regulations pertaining to nitrogen oxide emissions, mercury emissions,
15 handling and storage of coal combustion residuals, and mine reclamation. It also
16 includes scenarios with varying costs of complying with future carbon dioxide emission
17 regulations. Under a range of reasonable assumptions, WRA found that APS' proposal is
18 less costly than acquiring wholesale power from the market (Berry direct testimony at 5-8
19 and Exhibit DB-3).

20 **II. THE BEST WAY TO MANAGE THE RISKS OF COAL-FIRED POWER** 21 **PLANTS IS THROUGH THE RESOURCE PLANNING PROCESS**

22 Several parties, including WRA and the Sierra Club (Post Hearing Opening Brief
23 at 12-13), have raised concerns about whether APS is exposed to significant risks

24 _____
25 ³ The Sierra Club also argues that APS has not fully considered costs of complying with future
environmental regulations that may apply to Four Corners Units 4 and 5 (Post Hearing Opening
Brief at 6-8).

1 associated with costs of complying with future environmental regulation of fossil fueled
2 power plants. The current docket is not the best venue for reviewing this issue because it
3 concerns only a part of the problem. APS has other coal-fired resources at the Navajo
4 Generating Station and at the Cholla power plant. APS and the Commission should
5 systematically review the options for managing risks on a more comprehensive basis. In
6 addition, APS' plans for retiring Four Corners Units 1-3 might be delayed if the
7 transaction with SCE is not approved (APS Initial Brief at 41). Accordingly, WRA
8 recommended that coal plant retirement options be considered in the next resource
9 planning review. APS has agreed to include coal plant retirement options in its next
10 resource plan due in April 2012.

11 **III. THE COMMISSION SHOULD NOT IMPOSE A DELAY ON THE**
12 **CLOSING OF THE TRANSACTION**

13 RUCO recommends that the closing date for the transaction between SCE and
14 APS be delayed so that APS' effective purchase price is reduced and so that the extra 179
15 MW APS acquires will be delayed to a time when APS' demand has increased (RUCO
16 Opening Brief at 5-6). The Commission should not require APS to delay the closing date
17 for two reasons. First, either party may terminate the agreement by the end of 2012 if the
18 agreement has not been approved (APS-SCE agreement section 10.1; APS Initial Brief at
19 43). Thus, with a delay in the closing date, SCE could terminate the agreement and the
20 benefits of the agreement to APS' customers would be foregone. Secondly, one of the
21 major benefits of APS' proposal is the early retirement of Four Corners Units 1-3. That
22 early retirement may be delayed or may completely disappear if the Commission requires
23 APS to put off the closing date.
24
25

1 **IV. CONCLUSION**

2 The Commission should authorize APS to acquire SCE's share of Four Corners
3 Units 4 and 5, but only to the extent the Commission also requires retirement of Four
4 Corners Units 1-3 by December 31, 2013.

5 DATED this 14th day of October, 2011.

6
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15 ORIGINAL and 13 COPIES of
16 the foregoing filed this 14th day
of October, 2011, with:

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21 COPIES of the foregoing
22 electronically mailed this
14th day of October, 2011 to:

23 All Parties of Record

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