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 ARIZONA CORPORATION COMMISSION
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6 Attorneys for Sierra Club

7 **Before the Arizona Corporation Commission**

8
 9 COMMISSIONERS
 BOB STUMP, CHAIRMAN
 10 GARY PIERCE
 BRENDA BURNS
 11 ROBERT L. BURNS
 SUSAN BITTERS MITH

12
 13 IN THE MATTER OF THE APPLICATION
 OF ARIZONA PUBLIC SERVICE
 14 COMPANY FOR A HEARING TO
 DETERMINE THE FAIR VALUE OF THE
 UTILITY PROPERTY OF THE COMPANY
 15 FOR RATEMAKING PURPOSES, TO FIX A
 JUST AND REASONABLE RATE OF
 16 RETURN THEREON, TO APPROVE RATE
 SCHEDULES DESIGNED TO DEVELOP
 17 SUCH RETURN.

Docket No. E-01345A-11-0224
**MOTION TO INTERVENE OF SIERRA
 CLUB**

Arizona Corporation Commission
DOCKETED
 JAN 30 2014

DOCKETED BY 

18
 19 Pursuant to R14-3-105 of the Rules of Practice and Procedure of the Arizona Corporation
 20 Commission, Sierra Club hereby moves for leave to intervene in the above-captioned
 21 proceeding.

22 **Background**

23 1. Arizona Public Service (“APS”) first sought the Arizona Corporation
 24 Commission’s (“Commission”) approval to purchase Southern California Edison’s (“SCE”)
 25

1 share of Four Corners units 4 and 5 more than three years ago when on November 22, 2010 it
2 filed an application initiating Docket No. E-01345A-10-0474 seeking an exception to the
3 Commission's self-build moratorium. On April 24, 2012, the Commission issued Decision No.
4 73130 authorizing APS – if it chose to – to pursue the acquisition of Four Corners Units 4 and 5,
5 together with the retirement of Units 1-3. (Decision No. 73130 at 43.) However, the Commission
6 expressly withheld any determination of prudence or rate recovery: “This Decision should not be
7 construed to limit this Commission's authority to review the acquisition of Four Corners Units 4
8 and 5...at the appropriate time, and to make disallowances thereof due to imprudence, errors, or
9 inappropriate application of the requirements of this Decision.” *Id.* at 42.

10 2. Shortly thereafter, on May 24, 2012, the Commission issued Decision No. 73183
11 in this docket. That decision approved a settlement agreement signed by many, though not all, of
12 the parties in this docket and resolved most of the issues in Arizona Public Service's (“APS”)
13 last rate case (the “Settlement Agreement”). However, Decision No. 73183 expressly left open
14 the record in this docket to allow APS to file by December 31, 2013, an application for approval
15 to adjust its rates to reflect the acquisition of Four Corners Units 4 and 5. (Decision No. 73183 at
16 47.) That decision also expressly noted that, under the terms of the Settlement Agreement, “rates
17 shall be adjusted only if the Commission finds the Four Corners transaction to be prudent.”
18 (Decision No. 73183 at 15; Settlement Agreement at §10.2.)

19 3. More than 19 months after the decision in the rate case and with one day to spare,
20 APS filed an application on December 30, 2013 asserting that (1) APS had acquired SCE's
21 interest in Four Corners Units 4 and 5 and (2) APS would close Four Corners Units 1-3 by
22 January 2014. (Application to Approve Four Corners Rate Rider (“Application”) at 2.) Through
23 the Application, APS seeks to increase rates by 2.2% to recover the cost of acquiring the Four
24
25

1 Corners plant, the cost of retiring units 1-3, and the deferral balance authorized in Decision
2 73130.

3 4. Sierra Club is unsure as to the current procedural posture of this docket. Clearly,
4 Decisions 73130 and 73138 withheld any determination of prudence regarding the Four Corners
5 transaction, and that issue has never been litigated or settled before this Commission. Sierra Club
6 therefore assumes the Commission will issue a schedule that allows for discovery, the
7 submission of testimony from the parties, and potentially hearings, if necessary. More than three
8 years have passed since APS first presented its justification for the acquisition of SCE's share of
9 Four Corners. In that time, many facts on the ground have changed. In addition to SCE exiting
10 the plant, APS's application disclosed that another co-owner, El Paso Electric Company, is
11 apparently unwilling to continue at the plant after 2016.¹ Sierra Club is also aware that the
12 former owner of the mine supplying Four Corners, BHP Billiton, decided to end its ownership in
13 the mine.

14 5. The rapid departures of SCE, El Paso Electric Company, and BHP Billiton from
15 the Four Corners power plant and mining complex suggests that these other companies do not
16 have the same economic outlook for the future of Four Corners as does APS. A lot of time has
17 passed since APS presented its analysis of the Four Corners acquisition in November 2010 and
18 many things have changed. Numerous coal plants across the country have retired or announced
19 retirement; the U.S. government has announced the promulgation of new rules to address carbon
20 pollution from existing power plants; natural gas forecast prices have remained relatively flat and
21 below 2010 forecasts; and, renewable energy prices have continued to drop significantly. Many

22 ¹ Testimony of Jeffrey Guldner, p. 9. The nature of El Paso Electric Company's involvement in Four Corners is
23 unclear in APS's filing. In a separate regulatory filing with the Securities and Exchange Commission, APS indicated
24 that it would assume El Paso Electric Company's share of costs at Four Corners after 2016. "Under the 2016 Coal
25 Supply Agreement, APS has agreed to assume the 7% shortfall obligation." APS Securities and Exchange
Commission Form 8-K, Dec. 30, 2013. Available at: <http://phx.corporate-ir.net/phoenix.zhtml?c=86158&p=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbnmcueG1sP2lwYWdlPTkyOTg2NzYmRFNFUT0wJINFUT0wJINRREVTQz1TRUNUSU9OX0VOVEISRZzdWJzaWQ9NTc%3d>

1 of the assumptions APS made about the Four Corners transaction in 2010 are out of date. Sierra
2 Club therefore files this motion to intervene in this docket with the intention of addressing those
3 issues related to the acquisition of Four Corner and investigating whether the acquisition of Four
4 Corners is in the best interest of APS's rate payers.

5 **Sierra Club**

6 6. Sierra Club is a national, non-profit environmental and conservation organization
7 incorporated under the laws of the State of California, and the Sierra Club Grand Canyon
8 Chapter is located in Arizona. The Sierra Club is dedicated to the protection of public health and
9 the environment. Sierra Club moves to intervene in this proceeding on behalf of itself and its
10 approximately 12,000 Sierra Club Grand Canyon Chapter members who live and purchase utility
11 services in Arizona, many of whom are residential customers of Arizona Public Service
12 Company ("APS"). Sierra Club's Arizona members have a direct and substantial interest in this
13 proceeding because the proposed ratemaking process will have environmental, health and
14 economic consequences for Sierra Club members who are customers of APS. These Sierra Club
15 members have a right to participate in this proceeding to inform the Commission of their
16 interests, both environmental and economic, that relate to the type of electric power generation
17 that APS chooses to invest in and how rates are determined.

18 7. The Sierra Club Grand Canyon Chapter and the Sierra Club's Beyond Coal
19 campaign advance the development of energy conservation and renewable energy policies,
20 which reduce utility bills, and generate renewable energy. Sierra Club's work includes
21 advocating for the implementation of robust incentive programs that assist its members and
22 utility consumers to generate their own renewable energy and increase energy efficiency. The
23 Sierra Club's work includes intervening in efficiency, renewable energy and ratemaking dockets
24 at public utility commissions nationwide, submitting comments in numerous state and federal
25

1 agency energy-related proceedings and rulemakings, attending and speaking at public hearings,
2 speaking to students and civic and other organizations, and holding seminars and symposia – all
3 in support of policies to reduce the impact of climate change and other air pollution by
4 promoting clean energy alternatives and energy efficiency. As seen in Sierra Club's
5 participation in the proceeding regarding APS's purchase of Four Corners Power Plant (Docket
6 No. E-01-345A-10-0474), Sierra Club members have worked tirelessly to protect local citizens
7 from increased rates due to utility investment in aging coal plants such as Four Corners Power
8 plant when clean energy alternatives and energy efficiency measures are possible.

9 8. Sierra Club has an interest in this docket because its members who live within
10 APS service territory will be directly and substantially affected by APS's purchase of coal-fired
11 electric generating assets at the Four Corners Power Plant and the rate impacts associated with
12 the purchase.

13 9. Sierra Club was a party in the Four Corners docket addressing the self-build
14 moratorium (E-01345A-10-0474) and submitted extensive testimony in that proceeding
15 addressing the economic risks of the Four Corners transaction. Sierra Club did not previously
16 intervene in this rate case and did not execute the Settlement Agreement approved in Decision
17 No. 73183. Sierra Club has good cause for seeking leave to intervene at this time because this is
18 the first opportunity available for the public to address the prudence of APS's decision to acquire
19 SCE's share of Four Corners. APS's December 30, 2013 Application included new material
20 regarding costs associated with the purchase of Four Corners Power plant, and Sierra Club
21 intends to pursue additional discovery of the circumstances leading to the significant delay in the
22 closing of the Four Corners transaction with SCE.

1 10. Intervention by Sierra Club will not unduly broaden the issues or delay the
2 proceeding. Sierra Club will not seek to reopen any of the issues in APS's last rate case other
3 than the issues related to Four Corners.

4 11. To the extent this motion is inconsistent with the timing requirements of R14-3-
5 105(2) because hearings have already concluded for this docket, Sierra Club requests that the
6 Commission either (1) grant Sierra Club's motion to intervene at this time for good cause shown
7 because this is the first instance the public has had to review the prudence of the Four Corners
8 transaction (*see*, R14-3-101(b)), or (2) open a new docket to address the prudence of APS's
9 acquisition of Four Corners.

10 12. Sierra Club attorney Nellis Kennedy-Howard is an attorney licensed to practice
11 law and in good standing in the state of New Mexico (NM Bar No. 145706). Sierra Club attorney
12 Travis Ritchie is an attorney licensed to practice law and in good standing in the state of
13 California (CA Bar No. 258084). Ms. Kennedy-Howard and Mr. Ritchie will separately file
14 applications for *admission pro hac vice* in accordance with Arizona Supreme Court Rule 38(a).
15 Until such application is complete, Ms. Kennedy-Howard and Mr. Ritchie request permission
16 from the Commission to appear *pro hac vice* on a temporary basis pursuant to Supreme Court
17 Rule 38(a)(3). There is good cause to allow temporary admission because it will allow Sierra
18 Club to participate in the proceeding without delay.

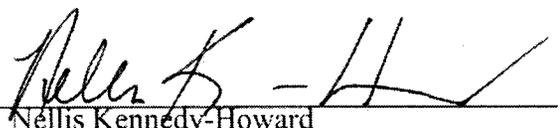
19 13. Sierra Club requests that all pleadings, correspondence, discovery, and other
20 documents be served on the following:

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WHEREFORE, Sierra Club respectfully requests that the Commission issue an order granting Motion to Intervene in the above-captioned proceeding.

Dated this 27th day of January, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing MOTION TO INTERVENE OF SIERRA CLUB on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

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Dated at San Francisco, California, this 27th day of January, 2014.



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