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BEFORE THE ARIZONA CORPORATIO

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1 **COMMISSIONERS**  
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Arizona Corporation Commission

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AZ CORP COMMISSION  
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7 IN THE MATTER OF THE APPLICATION OF DOCKET NO. E-01345A-11-0224  
8 ARIZONA PUBLIC SERVICE COMPANY  
9 FOR A HEARING TO DETERMINE THE  
10 FAIR VALUE OF THE UTILITY PROPERTY  
11 OF THE COMPANY FOR RATEMAKING  
12 PURPOSES, TO FIX A JUST AND  
13 REASONABLE RATE OF RETURN  
14 THEREON, AND TO APPROVE RATE  
15 SCHEDULES DESIGNED TO DEVELOP  
16 SUCH RETURN.

STAFF'S REPLY BRIEF

ORIGINAL

11 **I. INTRODUCTION.**

12 The Utilities Division Staff ("Staff") hereby files its Reply Brief. Staff has carefully  
13 considered the opening briefs filed by other parties in this case. No party has presented any new  
14 arguments that would lead Staff to revise its recommendations in this case. In its Reply Brief, Staff  
15 will respond to the Initial Pre-Hearing briefs filed by Arizona Public Service Company ("APS");  
16 Arizona School Boards Association and Arizona Association of School Business Officials  
17 (collectively "School Associations"); Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively "Wal-  
18 Mart"); Freeport McMoRan Copper & Gold Inc., and Arizonans for Electric Choice and Competition  
19 (collectively, "AECC"); Noble Americas Energy Solutions L.L.C., ("Noble Solutions"); and the  
20 Kroger Co. ("Kroger").

21 Staff relies on the arguments made in its Initial Post-Hearing Brief with respect to the  
22 prudence of the transaction.

23 **II. STAFF'S PROPOSED FVROR IS THE ONLY FVROR THAT IS CONSISTENT**  
24 **WITH THE SETTLEMENT AGREEMENT.**

25 The Commission should adopt Staff's proposed Fair Value Rate of Return ("FVROR") in this  
26 case, as it is the only FVROR that is consistent with Decision No. 73183. APS argues that a higher  
27 FVROR is implied by paragraph 10.2 of the Settlement Agreement, which states that the "rate base  
28

1 and expense effects” of the transaction are to be recognized for purposes of calculating the Rate  
2 Rider. Staff does not agree. As discussed below and in its Initial Brief, Staff believes that the “rate  
3 base and expense effects” have all been appropriately recognized.

4 A. APS’s Reliance Upon Other Provisions In The Settlement Agreement And  
5 Decision No. 73183 As Supporting Its Position On Fair Value Rate Of Return Is  
6 Misplaced.

7 APS argues that other provisions in both the Settlement Agreement and Decision No. 73183  
8 support its position on Fair Value Rate of Return. For instance, APS refers to paragraphs 3.1 and 3.2  
9 of the 2012 Settlement Agreement and Findings of Fact 40 and 35 in Decision No. 73183, claiming  
10 that these provisions will be modified when the Four Corners transaction is considered. According to  
11 APS, the FVROR is just one more item on the list of provisions that require modification due to the  
12 addition of Four Corners.<sup>1</sup> Staff does not agree.

13 APS relies upon Sections 3.1 and 3.2 of the Settlement Agreement as supporting its position  
14 on FVROR. APS states that these provisions, like Section 10.2, need to reflect certain new updated  
15 information even though not specifically stated. Section 3.1 of the Settlement Agreement merely sets  
16 forth the various elements of the rate increase in this case. Section 3.2 sets forth the fair value rate  
17 base used to establish rates and the adjusted Test Year revenue. The Settlement Agreement expressly  
18 required APS to provide updated rate base and expense numbers associated with the Four Corners  
19 transaction. As a result, these provisions actually support Staff’s position, not APS’s.

20 APS also states that Findings of Fact 35 and 40 in Decision No. 73138 support its position.<sup>2</sup>  
21 But, again, Finding of Fact 35 only sets forth the Company’s original cost rate base and the  
22 Company’s jurisdictional rate base for the test year ending December 31, 2010. The Settlement  
23 Agreement expressly required the Company to provide updated rate base and expense numbers for  
24 the Four Corners transaction. Finding of Fact 40 sets out the various components of the rate increase.  
25 The Settlement Agreement expressly required updated rate base and expense information, to be used  
26 in determining the revenue requirement associated with Four Corners. Thus, again this supports  
27 Staff’s position, more than APS’s position.

28 <sup>1</sup> APS Initial Post-Hearing Brief (hereinafter “Initial Br.”) at 2.

<sup>2</sup> *Id.* at 4.

1 APS argues that, regardless of whether it is viewed as a rate base issue or a financing and  
2 capital structure issue the mathematical equation requires use of the WACC.<sup>3</sup> But, as noted by Staff  
3 in its Initial Post-Hearing Brief, the mathematics only work in APS's favor if certain inputs are held  
4 constant. It is Staff's position that, if the FVROR is to change as a result of the Four Corners  
5 transaction, then all components of FVROR need to be reevaluated.

6 **B. APS's Position Does Not Recognize That The FVROR Was The Product Of A**  
7 **Settlement Agreement Between The Parties.**

8 APS argues that the WACC must be used just as "if the number 8.33% had appeared in the  
9 Settlement Agreement."<sup>4</sup> But this whole discussion misses the point. The FVROR was the product  
10 of a Settlement Agreement between the parties. A settlement agreement is by its very nature a give  
11 and take process between the parties. APS received significant value from Section 10.2 of the  
12 Settlement Agreement. Had the Four Corners Rate Rider not been authorized through Section 10.2 of  
13 the Settlement Agreement, APS would have only been able to recoup its cost of debt as provided in  
14 Decision No. 73130, for the deferral period until APS's next rate case. The cost of debt associated  
15 with the Four Corners transaction was 4.725%. Under Section 10.2 of the Settlement Agreement, the  
16 Company was allowed to institute a Rate Rider to begin to recover the rate base and expense effects  
17 associated with the transaction. Together Decision Nos. 73130 and 73183 provide significant benefit  
18 to the Company.

19 APS relies upon *Arizona Water Company*<sup>5</sup> for the proposition that it is entitled to recover its  
20 WACC at a minimum.<sup>6</sup> There are two factors that distinguish *Arizona Water Company* from this  
21 case. First, *Arizona Water Company* did not involve a settlement agreement. Second, the *Arizona*  
22 *Water Company* case was decided well before the Arizona Court of Appeals decision in *Chaparral*  
23 *City Water Company*.<sup>7</sup> APS also states that "[n]either Staff nor RUCO has cited to any Commission  
24 decision since *Arizona Water Company* that established a FVROR that did not, at a minimum,  
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26 <sup>3</sup> *Id.* at 3.

27 <sup>4</sup> *Id.*

28 <sup>5</sup> Dec. No. 53537.

<sup>6</sup> APS Initial Br. at 4.

<sup>7</sup> *Chaparral City Water Co. v. Ariz. Corp. Comm'n*, 1 CA-CC 05-0002 (Ariz. App. Feb. 13, 2007)(mem. decision).

1 recover the utility's WACC."<sup>8</sup> In the *Black Mountain Generating Station* case referenced below,  
2 UNSE was not allowed to use a different and higher FVROR with BMGS.<sup>9</sup>

3 **C. An Asset Specific Analysis Must Look At All FVROR Components.**

4 According to APS, [e]stablishing WACC is a "simple and indisputable mathematical  
5 calculation once all the necessary inputs are established."<sup>10</sup> But, all the necessary inputs have not  
6 been established. If a new FVROR is to be used for this asset alone, then all components of FVROR  
7 need to be re-evaluated. Further, if as APS suggests, the WACC and FVROR are an amalgamation  
8 of individual asset specific rates of return; then necessarily, both the WACC and the FVROR would  
9 need to be updated to reflect the individual financing arrangements and risk reduction associated with  
10 the Four Corners deferral and the Rate Rider.

11 The asset specific debt/equity ratio associated with the acquisition is quite different than  
12 suggested by APS. The Prospectus (at Attachment C, page 4 of 57) indicates that \$182 million of the  
13 proceeds concern the acquisition.<sup>11</sup> This information suggests conservatively that the \$225 million  
14 rate base addition was funded by an 80/20 debt/equity ratio of 4.725% and an equity rate of 10%  
15 which would produce a 5.75% WACC.<sup>12</sup>

16 When faced with a similar argument by UNSE to use a higher FVROR for the Black  
17 Mountain Generating Station ("BMGS"), the Commission found:

18 We do not find it appropriate to use a separate FVROR with BMGS...A Company's  
19 rate base is comprised of both new and old plant, and it would be one-sided to apply a  
20 different (higher) rate of return to only newly acquired individual items of plant.<sup>13</sup>

21 The Commission should adopt Staff's position on the FVROR.

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25 <sup>8</sup> APS Initial Br. at 4.

26 <sup>9</sup> Dec. No. 71914 at 52.

27 <sup>10</sup> APS Initial Br. at 3.

28 <sup>11</sup> Prospectus \$250 M Debt Offering, Ex. S-5.

<sup>12</sup> Summary of APS, RUCO, Staff Rate of Return Positions to Include FVROR, Ex. S-20 at 2.

<sup>13</sup> Dec. No. 71914 at 52.

1 **III. THE ARIZONA CONSTITUTION DOES NOT CONFINE THE COMMISSION'S**  
2 **RATEMAKING JURISDICTION TO GENERAL RATE CASES.**

3 The Arizona School Boards Association and the Arizona Association of School Business  
4 Officials (collectively, "School Associations") seem to suggest that the Commission's rate setting  
5 methods should be limited to those employed by the traditional, general rate case procedure  
6 embodied by A.A.C. R14-2-103. This position ignores the Commission's authority to permit rate  
7 adjustments through step increases in order to address special circumstances. The Commission—and  
8 the entities that it regulates—are often faced with new problems and new challenges. Not all of them  
9 can be meaningfully addressed through a traditional rate case.

10 In *Arizona Community Action Assoc. v. Ariz. Corp. Comm'n*, 123 Ariz. 228, 599 P.2d 184  
11 (1979), the court upheld step rate increases based on subsequent additions to the company's plant.  
12 Specifically, the company was granted an initial six percent rate increase; in the following two years,  
13 the company was permitted to increase its rates by a maximum of five percent per year, if certain  
14 conditions were met. For the step 2 increase, the company was permitted to increase its rates by the  
15 lesser of either five percent of gross operating revenues or a revenue deficiency, which was

16 *calculated by first totaling (1) the amount of electric properties placed in service since*  
17 *the prior rate increase, (2) construction work in progress for the preceding calendar*  
18 *year for any plant for which construction work in progress had previously been*  
19 *included in rate base, and (3) construction work in progress during the preceding*  
20 *calendar year for plants scheduled to go into service within two years.*

21 *Id.* at 229, 599 P.2d at 185 (emphasis added). The sum of these amounts was then to be multiplied by  
22 the rate of return on electric plant authorized by the Commission.

23 The court upheld this portion of the Commission's order:

24 The Commission stated in the decision under attack that it . . . would initiate  
25 *innovative procedures in an attempt to deal promptly and equitably with increasingly*  
26 *complex regulatory matters.* At the Step 1 hearing, the Commission fulfilled the  
27 constitutional requirements of art. 15, §§ 3, 14, which mandate a finding of the fair  
28 value of all property at the time of fixing a rate.

29 *Id.* at 230, 599 P.2d at 186 (emphasis added). The court further indicated that it did not "find fault"  
30 with the Commission's efforts to avoid a "constant series of extended rate hearings . . ." *Id.* at 231,  
31 599 P.2d at 187. Finally, the court noted that the Commission's order in the rate case "resulted in a

1 determination of fair value” and that further adjustments *between rate cases* “were adequate to  
2 maintain a reasonable compliance with the constitutional requirements *if used only for a limited*  
3 *period of time.*” *Id.* (emphasis added).

4 As *Community Action* demonstrates, the view that a full rate case is the only vehicle whereby  
5 the Commission may exercise its rate setting expertise is inconsistent with the Commission’s  
6 constitutional authority. Arizona courts have recognized that the Commission’s ratemaking authority  
7 is far from narrow and provides a broad range of regulatory tools. *See Arizona Corp. Comm’n v.*  
8 *State ex rel. Woods*, 171 Ariz. 286, 294, 830 P.2d 807, 815 (1992).

9  
10 **IV. THESE PROCEEDINGS APPROPRIATELY COMPLY WITH ARTICLE XV,  
SECTION 14 OF THE ARIZONA CONSTITUTION.**

11 The School Associations further claim that the proposed Four Corners Rate Rider will violate  
12 the fair value provision of the Arizona Constitution. They argue that the Commission may not  
13 determine a Company’s fair value rate base for ratemaking purposes by relying on a fair value  
14 finding from a prior order as a starting point and then updating that finding with new information.  
15 However, the Commission has wide discretion to decide the method that it will use to determine fair  
16 value. As our Supreme Court has recognized, “the commission in exercising its rate-making power  
17 of necessity has a range of legislative discretion . . . .” *Simms v. Round Valley Light & Power Co.*, 80  
18 Ariz. 145, 154, 294 P.2d 378, 384 (1956).

19 The School Associations also argue that the Four Corners Rate Rider is an example of “single  
20 issue ratemaking” and that such an approach is prohibited by *Scates v. Ariz. Corp. Comm’n*, 118 Ariz.  
21 531, 578 P.2d 612 (App. 1978). The holding of *Scates*, however, is much more narrow: that case  
22 focuses upon the requirements of Article XV, Section 14 of the Arizona Constitution, which pertain  
23 to determining fair value rate base:

24 We . . . hold that the Commission was without authority to increase the rate without  
25 any consideration of the overall impact of that rate increase upon the return of . . . [the  
26 utility], and without, as specifically required by our law, a determination of . . . [the  
27 utility’s] rate base.  
28

1 *Id.* at 537, 578 P.2d at 618. The *Scates* court was careful to make clear that a full rate case is *not*  
2 required for every increase in rates. *Id.* The court noted that “[t]here may well be exceptional  
3 situations in which the Commission may authorize partial rate increases without requiring” a full rate  
4 case. *Id.*

5 Section X of the Settlement Agreement (which addresses the Four Corners Rate Rider) was  
6 developed in the context of a full rate case in which the Commission determined the Company’s fair  
7 value rate base. Section 10.3 of that Agreement specifically requires the Company to provide  
8 updated financial information, such as a current balance sheet, a current income statement, an  
9 earnings schedule, and an adjusted rate base schedule, as part of its Four Corners surcharge request.<sup>14</sup>  
10 In addition to these updated schedules, the Company also provided pre-filed testimony describing the  
11 Company’s financial condition. Clearly, the Company submitted updated financial information in  
12 support of its surcharge request.

13 Where exceptional circumstances exist, and a mechanism for a future rate adjustment is  
14 adopted in the context of a rate case as part of a utility’s rate structure, and if that mechanism meets  
15 the constitutional requirements that rate base is determined and the overall impact on the rate of  
16 return prescribed, that mechanism will satisfy the Arizona Constitution. General rate cases are time  
17 consuming and costly, both for the Company and for ratepayers, who pay for the costs of the rate  
18 case in rates. *See Arizona Corp. Comm’n v. Ariz. Pub. Serv. Co.*, 113 Ariz. 368, 371, 555 P.2d 326,  
19 329 (1976) (noting that a “constant series of rate hearings” does not serve the public interest). The  
20 School Associations cannot convincingly claim that the proposed Four Corners rate rider is *per se*  
21 inconsistent with the Constitution’s fair value requirements, because Section 10.3 expressly requires  
22 the Company to provide updated financial information. The record in this case contains ample  
23 evidence and analysis of the Company’s fair value rate base and fair value rate of return. The  
24 Constitution does not require more.

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28 <sup>14</sup> See Dec. No. 73183, Ex. A at 15.

1 **V. THE COMMISSION SHOULD ADOPT APS'S PROPOSED TREATMENT FOR**  
2 **AG-1.**

3 A complete exemption of the AG-1 customers from the Four Corners Rate Rider ("FCRR")  
4 would be inconsistent with the AG-1 tariff and the applicable retail rate schedules. The AG-1  
5 customers argue that the specific provisions of AG-1 essentially "trump" the Settlement Agreement's  
6 more general provisions. Even if this "trumping" effect applies, it would not change the interplay  
7 between the terms used in AG-1 and the corresponding terms used in the applicable retail rate  
8 schedules. An examination of this interplay clearly shows that AG-1 customers were not intended to  
9 be completely exempt from the Four Corners Rate Rider.

10 As discussed in Staff's Initial Brief, the term "generation charges" in AG-1 is a specific  
11 reference to the "generation charges" set forth in the applicable retail rate schedules. It is not a term  
12 that refers comprehensively to all generation functions and/or facilities. If that meaning had been  
13 intended, it would not have been necessary for AG-1 to specifically exempt the Power Supply  
14 Adjustor ("PSA") and the Environmental Impact Surcharge ("EIS"), both of which are generation-  
15 related mechanisms.<sup>15</sup> The Four Corners Rate Rider is a specific surcharge; it is not encompassed by  
16 the "generation charges" referred to in the applicable retail schedules. The Four Corners Rate Rider  
17 clearly applies to the applicable retail schedules, and it is not exempted from application by AG-1.  
18 Under the circumstances, the proposal offered by APS is reasonable, and should be adopted by the  
19 Commission.

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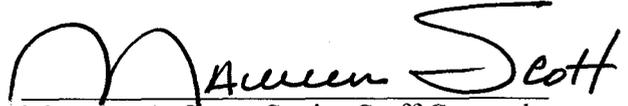
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<sup>15</sup> See Dec. No. 73183, Ex. A at Sec. VIII, XI.

1 **VI. CONCLUSION.**

2 The Commission should adopt Staff's resolution of the disputed issues as set forth herein.

3 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of September 2014.

4 

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