

ORIGINAL  
PINNACLE WEST  
CAPITAL CORPORATION



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October 23, 2015

Chairman Susan Bitter Smith  
Commissioner Bob Burns  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

DONALD E. BRANDT  
Chairman, President and  
Chief Executive Officer

Mail Station 9042  
P.O. Box 53999  
Phoenix, AZ 85072

Arizona Corporation Commission

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OCT 23 2015

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Re: September 8, 2015 Letter Concerning Campaign Contributions to ACC  
Candidates  
Docket No. AU-00000A-15-0309

Dear Chairman Bitter Smith and Commissioner Burns:

On behalf of Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation (the "Companies"), I write in response to the September 8, 2015 letter filed by you in this docket. In that letter, you request that "all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." To say that this request is unusual, if not unprecedented in APS' 125-year history, only begins to highlight the critical nature of the issues it raises.

There is no disagreement that the First Amendment protects the right of individuals and corporations to engage in political speech through campaign expenditures. Indeed, the First Amendment "has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989). APS has always been a major participant in the public life of the State, by virtue of its responsibility to deliver an essential public service to many of its citizens. APS has for many years availed itself of all lawful means to make its views on issues important to its customers, employees and shareholders known to legislators, public officeholders and all those who have an interest in the future of Arizona. Accordingly, a request from governmental officials with great authority over APS to relinquish one means of expression of this right is a serious matter.

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The suggestion that political speech conducted in full compliance with law might threaten the Commission's integrity is troubling. Each Commissioner takes an oath to faithfully and impartially discharge the duties of his or her office. Each Commission decision is made in full public view, must be grounded in the record and must be based upon evidence. The Companies flatly reject any suggestion that Commissioners would base decisions affecting the well-being of the state's citizens other than on the evidence submitted to them, or would otherwise compromise his or her oath of office.

The concerns raised by your request extend beyond this particular Commission and implicate our broader political process. Much of the Commission's work involves legislative policy judgments, similar to work many elected and appointed commissions and public bodies do across the country. If the Companies, or other parties appearing before the Commission, seek to persuade voters to elect Commissioners who support certain policies instead of others, that choice to engage in a public political debate does not reflect on the integrity of commissioners. Nor does political speech reflect on the integrity of legislators in Arizona, or in any other state. This is simply how democracy works: consumers, businesses, and others with an interest in legislative decisions seek to inform voters and persuade them to support the candidates whose positions those speakers favor, and the voters decide which candidates to elect.

Under the Arizona Constitution, Corporation Commissioners are elected officials, accountable to the people of Arizona. Because Commissioners are elected through a democratic process, everyone, including the Companies, has a right to participate in that process.

Vigorous debate about whether and how our system of democracy works has gone on since the founding of our Republic. Throughout, one theme has consistently emerged: if there is a disagreement about who should be elected, or the nature of the First Amendment, or how our system works, "the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). As the U.S. Supreme Court explained decades later, "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United v. Federal Election Commission*, 558 U.S. 310, 339 (2010).

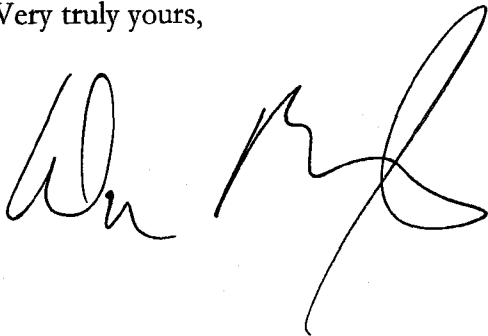
The request that the Companies refrain from exercising their First Amendment rights is particularly problematic because significant political expenditures will undoubtedly be

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made by others who lack the permanence and presence of APS before the Commission and in the state of Arizona. It is no secret that many entities have strong economic interests in Commission decisions. The Commission will not possess jurisdiction over all of these entities. In that circumstance, the Commission will be unable to audit, much less enforce, the promises or practices of such parties in their future campaign financing activities. When one party muzzles itself, while others remain free to speak, the public debate is less informed, more skewed, and ultimately harmful to the “uninhibited marketplace of ideas in which truth will ultimately prevail.” *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014).

With respect, the Companies cannot agree to forfeit any of their First Amendment rights to speak on public issues. The Companies will continue to advocate for sound policies that enable a sustainable energy future for Arizona.

Very truly yours,

A handwritten signature in black ink, consisting of a stylized first name followed by a last name with a large, sweeping flourish.

c: Commissioner Bob Stump  
Commissioner Doug Little  
Commissioner Tom Forese