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1 Thomas L. Mumaw  
2 Melissa M. Krueger  
3 Pinnacle West Capital Corporation  
4 400 North 5th Street, MS 8695  
5 Phoenix, Arizona 85004  
6 Tel: (602) 250-2052  
7 Fax: (602) 250-3393  
8 E-Mail: [Thomas.Mumaw@pinnaclewest.com](mailto:Thomas.Mumaw@pinnaclewest.com)  
9 [Melissa.Krueger@pinnaclewest.com](mailto:Melissa.Krueger@pinnaclewest.com)  
10 Attorneys for Arizona Public Service Company

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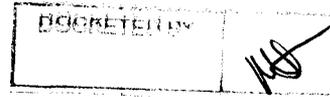
BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH, Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

Arizona Corporation Commission  
DOCKETED

NOV 18 2015



IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR APPROVAL OF  
ELECTRIC SERVICE AGREEMENTS  
WITH THE ARIZONA BOARD OF  
REGENTS FOR AND ON THE BEHALF  
OF ARIZONA STATE UNIVERSITY

DOCKET NO. E-01345A-15-0394

APPLICATION TO APPROVE  
ADDENDUM TO ELECTRICAL  
SUPPLY AGREEMENTS

On or about November 18, 2015, Arizona Public Service Company (APS) and the Arizona Board of Regents for and on the behalf of Arizona State University (collectively ASU) executed an Addendum to the APS-ASU Electric Service Agreements. Because the Addendum contains Competitively Confidential Information, the copy attached as Exhibit A has been redacted. An unredacted version will be provided to Arizona Corporation Commission (Commission) Staff for their confidential review pursuant to a Protective Agreement.

ASU is the largest institution of higher learning in APS's service territory. It is a comprehensive public research university whose charter includes advancing research and discovery of public value as well as assuming a fundamental responsibility for the

1 economic, social, cultural and overall health of the communities it serves. It is also  
2 recognized as a leader in innovation. ASU has multiple campuses in APS's service  
3 territory and serves a large number of students through on-line learning opportunities.

4 The Addendum recognizes ASU's interest in a greater renewable resource  
5 commitment through provisions that allow ASU to purchase additional amounts of  
6 renewable energy to enhance the overall resource profile that it receives from APS.  
7 Pursuant to this Addendum, APS intends to develop and construct a new 40 MW solar  
8 photovoltaic generating asset to be located at the site of its Saguaro Power Plant. APS  
9 will own, operate and maintain the asset, which will be procured through a competitive  
10 process and constructed by a third-party solar company. ASU in turn will be purchasing  
11 a quantity of renewable energy and associated environmental attributes from APS  
12 equivalent to a portion of the solar assets.<sup>1</sup>

13 While APS intends to include the new solar asset in its post test-year plant  
14 adjustment in its upcoming rate case, ASU and eBay will cover the additional cost of the  
15 renewable energy over the life of the asset under the terms of both customer specific  
16 agreements. This approach encourages a greater use of renewable energy on the APS  
17 system without increasing the cost to other APS customers.

18 APS requests approval of this Addendum because it is an important means of  
19 economic development, consistent with the provisions the Commission approved in  
20 Decision No. 73183 that authorized APS to pursue economic development opportunities  
21 through the use of Commission-approved contracts. (See Decision No. 73183 at Exhibit  
22 A, Paragraph 17.4.) The Addendum is also permitted under A.A.C. R14-2-1606 (C)(6)  
23 in that the Addendum is for load retention and for the development of new renewable  
24 resources and does not prevent ASU from accessing a competitive retail market if such  
25 market should develop in Arizona during the term of the Addendum.

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28 <sup>1</sup> eBay, Inc. will purchase the balance under a previously approved special contract.

1 For the above reasons, APS requests that the Commission approve the  
2 Addendum. Because of the expiration of the Investment Tax Credit in 2016, time is of  
3 the essence in the completion of the new solar resources at Saguaro and APS requests  
4 expedited review of this Application.

5 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of November 2015.

6  
7  
8 By: Melissa M. Krueger  
9 Thomas L. Mumaw  
Melissa M. Krueger

10 Attorneys for Arizona Public Service Company

11  
12 ORIGINAL and thirteen (13) copies  
13 of the foregoing filed this 18 day of  
November 2015, with:

14 Docket Control  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington Street  
Phoenix, Arizona 85007

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[REDACTED]

## ADDENDUM TO APS – ASU ELECTRIC SUPPLY AGREEMENTS

The parties to this Addendum to the Electric Supply Agreement (“Addendum” or “Agreement”) are ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, (“APS”) and THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY (“ASU”). APS and ASU may also be referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

- A. The Parties have entered into various Electric Supply Agreements for the supply and purchase of electric power, in accordance with the terms of those agreements and their applicable rate schedules and service schedules (the “Electric Supply Agreements”).
- B. APS’s present electric energy mix is approximately 44% carbon-free, which is comprised of approximately 28% nuclear and 16% renewable generation and energy efficiency.
- C. ASU is committed to reducing and minimizing harmful emissions, including greenhouse gases, related to its energy consumption. As a result, ASU desires to purchase a greater amount of its energy requirements from renewable resources to achieve a more sustainable energy mix.
- D. APS is willing to construct new solar generating assets and provide an equivalent amount of renewable energy attributes in accordance with the terms of this Addendum.
- E. APS has issued a competitive solicitation to find a third party developer to build the Solar Assets. APS anticipates selecting a developer and executing an agreement with such party (the “Development Agreement”) on or about [REDACTED].

F. [REDACTED]

### AGREEMENT

#### A. Definitions

- 1. “ACC” means the Arizona Corporation Commission, or any other successor governmental agency.
- 2. “ACC Approval” means that the ACC has given approval with respect to this Addendum, which approval is acceptable in all respects to both Parties (each in its sole discretion). For purposes of clarity, each Party shall make its own determination whether the ACC has approved this Addendum, and ACC Approval will not be deemed to have occurred until the Parties agree, in written notice to one another, that it has occurred.
- 3. “Annual Contract Amount” or “ACA” means the quantity of green energy to be purchased by ASU annually from APS during the term of this Addendum. The Parties anticipate that the ACA will [REDACTED]



[REDACTED]

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- [REDACTED]
4. "Environmental Attributes" means environmental characteristics that are attributable to a renewable energy resource, including [REDACTED]

5. "Monthly Contract Amount" or "MCA" means the ACA divided by twelve (12).

6. "Solar Assets" means one (1) or more new solar photovoltaic generating facilities to be developed and operated by APS in the State of Arizona with an expected aggregate nameplate generating capacity of [REDACTED], that is sized to produce over the course of the Term an average of the ACA, [REDACTED]

**B. Conditions Precedent.** The following conditions are precedent to the effectiveness of this Addendum:

1. Regulatory Approval. If ACC Approval has not been received by [REDACTED] (or such later date as mutually agreed upon by the Parties), this Addendum shall automatically terminate without further action from either Party, in which case neither Party shall have any further liability or obligation to the other Party hereunder.
2. Execution of Development Agreement. If APS has not executed a Development Agreement by [REDACTED] (or such later date as mutually agreed upon by the Parties), this Addendum shall automatically terminate without further action from either Party, in which case neither Party shall have any further liability or obligation to the other Party hereunder. APS shall notify ASU on or before [REDACTED] as to whether APS has executed such a Development Agreement.



[REDACTED]

## ADDENDUM TO APS – ASU ELECTRIC SUPPLY AGREEMENTS

[REDACTED]

APS may, at any time during the Term of this Addendum and in its sole discretion, construct other solar electric generating facilities to replace the Solar Assets, provided that any such replacement solar facilities are located in the State of Arizona and have at least the same nameplate generating capacity as the Solar Assets and generate Environmental Attributes equivalent in nature to the Environmental Attributes that could be generated from the Solar Assets. Subject to the foregoing limitations, APS shall have the sole discretion to determine the specific solar technology to be used for the Solar Assets and any replacement solar facilities. APS's right to transfer the Solar Assets to an affiliate as described above in this Section shall also apply to any replacement solar facilities.

2. Location of Solar Assets. The specific location of the Solar Assets, or any replacement solar facilities, will be determined by APS, in its sole discretion, provided that such location is within the State of Arizona. As of the date of signature of this Addendum, the Parties anticipate that the Solar Assets will be located at APS's Saguaro generating facility. In the event that APS decides to construct the Solar Assets (or any replacement solar facilities during the Term of this Addendum), at a different location, it will promptly notify ASU of the same with a description of any replacement solar facilities and the actual location of the Solar Assets or any replacement thereof, as applicable, and APS agrees to consider input from ASU regarding any such alternative location. If APS determines that it will construct a majority of the generating capacity of the Solar Assets at a location other than APS's Saguaro generating facility, it shall give ASU Notice of such determination and ASU shall have the right to terminate this Addendum upon Notice to APS within thirty (30) days after receipt of such Notice from APS.
3. Capacity of Solar Assets; Annual Contract Amount/Monthly Contract Amount. The exact capacity of the Solar Assets, and therefore the contracted-for Annual Contract Amount and corresponding Monthly Contract Amount will be determined by mutual agreement of the Parties [REDACTED]. At such time, the Parties will negotiate in good faith to determine the appropriate ACA and MCA, together with the Parties' applicable obligations, rights and remedies, and will promptly reduce such terms to a writing signed by both Parties that will be made a part of this Addendum.

4. Marketing. [REDACTED]

5. [REDACTED]



[REDACTED]

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3. [REDACTED]

**Effective Date and Term.** Subject to the conditions precedent specified in Section B above, the Parties' obligations to sell and purchase energy and Environmental Attributes under this Addendum will begin on the date of commercial operation (as that term is commonly understood in the electric utility industry) of the Solar Assets (the "Effective Date"), which the Parties expect to occur on or before January 1, 2017. APS shall provide ASU with written Notice of the date of commercial operation not later than five (5) business days thereafter. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Parties may extend the term by mutual written agreement. The written Notice from ASU shall be deemed a written modification to this Addendum even without the signature of both Parties, and shall be automatically made part of this Addendum upon receipt by APS.

**D. APPLICABLE SCHEDULES.** Notwithstanding anything to the contrary in this Addendum, APS will continue to supply electric service to ASU in accordance with ASU's Electric Service Agreements and their designated rate schedules, as well as all generally applicable service schedules now in effect or as amended from time to time.

**E. SOLAR ASSETS.**

1. Construction and Operation of Solar Assets. As part of this Addendum, APS will develop, operate and maintain the Solar Assets within the State of Arizona in a commercially reasonable manner. The Solar Assets are expected to produce over the course of the Term an average of the ACA. APS will operate and maintain the Solar Assets throughout the term of this Addendum (as defined in Section C above); [REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

**F. PURCHASE AND SALE OF RENEWABLE ENERGY AND ENVIRONMENTAL ATTRIBUTES.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

4. Renewable Energy Attributes.

- a. In consideration for payment by ASU of the Final Price, APS will provide the Environmental Attributes (equivalent in nature to those that would be associated with generation from the Solar Assets) to ASU in the amount of ACA per calendar year. In addition, in consideration for payment by ASU of the Final Price, APS will also provide any other Environmental Attributes (equivalent in nature to those that would be associated with generation from the Solar Assets), which cannot be practicably quantified in units of MWh, to ASU each calendar year, in an amount and in units calculated in a commercially reasonable manner. In each case such Environmental Attributes shall be generated in that same calendar year from solar renewable assets under APS's control in the State of Arizona. For clarity, the Environmental Attributes described above may be generated or created from the Solar Assets or from other solar photovoltaic assets controlled by APS located in the State of Arizona as determined by APS.

Notwithstanding the above, the quantity of Environmental Attributes due for the first year and final year of the Term shall be prorated. [REDACTED]

[REDACTED]



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b.

- c. APS makes no representation or warranty regarding whether any governmental agency or authority, acting unilaterally, can or will, during the Term of this Addendum, record, report, or otherwise claim any of the Environmental Attributes for its own purposes. If APS is required by applicable law or regulation to include in any report to any governmental agency or authority the quantity of MWhrs generated by, or other characteristics of, the solar photovoltaic facilities that generate or create the Environmental Attributes transferred or to be transferred to ASU under this Addendum, APS shall reflect in such reports that it has transferred or will transfer such Environmental Attributes to ASU and that such Environmental Attributes are not owned by APS to claim or use to satisfy any renewable energy or portfolio standard applicable to APS.
- d. Nothing in this Addendum shall be deemed to constitute a consent, authorization or waiver by ASU to or of any claim to or taking by any governmental agency or authority of any Environmental Attributes transferred or to be transferred to ASU under this Addendum and ASU reserves all rights to contest and seek relief, compensation and damages from any governmental agency or authority for any such claim or taking by any governmental agency or authority.

**G. TERMINATION.** In addition to the termination rights specified in Section B and Section F above,

In the latter case,



## ADDENDUM TO APS – ASU ELECTRIC SUPPLY AGREEMENTS

either Party may terminate this Addendum by providing written Notice of the same to the other Party. Upon termination of this Addendum in accordance with this Section G, neither Party shall have any further liability or obligation to the other Party hereunder.

**H. DISPUTE RESOLUTION.** If either Party breaches the terms of this Addendum, the non-breaching Party will provide written Notice of the breach. The breaching Party will have fifteen (15) days from the date of that Notice to cure the breach. If the breach is not cured by the fifteenth (15<sup>th</sup>) day thereafter, the Parties will attempt to resolve the breach through senior management negotiations. The senior management negotiations must conclude within thirty (30) days of the initial written Notice of breach. If the Parties do not resolve their dispute related to the breach within this thirty (30) day period, each Party may pursue any rights or remedies available in law, equity or otherwise, but no act or omission taken pursuant to this dispute resolution provision shall be used as evidence of a breach or otherwise used against the alleged breaching Party in any subsequent legal action.

### **I. GENERAL PROVISIONS.**

1. Attorney's Fees. If either Party is successful in any formal action to compel performance under or for breach of this Agreement (through formal mediation, arbitration or litigation), that Party will be entitled to recover reasonable attorneys' fees in addition to the amount of judgment and/or costs.
2. Waiver. A waiver of any default of the other Party or any other matter arising in connection with this Agreement, at any time by either party, may not be construed as a waiver of any subsequent default or matter.
3. Entire Agreement. THIS ADDENDUM, TOGETHER WITH THE REFERENCED SCHEDULES, ANY OTHER REFERENCED OR ATTACHED DOCUMENTS, THE APPLICABLE ENERGY SUPPLY AGREEMENTS BETWEEN THE PARTIES, AND THE RULES OF THE ARIZONA CORPORATION COMMISSION, STATES THE ENTIRE OBLIGATION OF THE PARTIES IN CONNECTION WITH THE SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES AS SPECIFIED HEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), NOT SPECIFIED IN THIS AGREEMENT, THE REFERENCED SCHEDULES, ANY OTHER REFERENCED OR ATTACHED DOCUMENTS, THE APPLICABLE ENERGY SUPPLY AGREEMENTS BETWEEN THE PARTIES, OR IN THE APPLICABLE RULES OF THE ARIZONA CORPORATION COMMISSION CONCERNING THE DELIVERY OF ENERGY OR ENVIRONMENTAL ATTRIBUTES BY APS TO ASU.
4. Governing Law and Venue. This Agreement will be interpreted in accordance with the substantive and procedural laws of the State of Arizona without regard to any conflicts of law provision contained therein. ASU's obligations hereunder are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Each Party waives any objection it may now or hereafter have to venue or to convenience of forum
5. Notices. All notices required pursuant to this Addendum (each, a "Notice") shall be provided to the following. Notwithstanding the above, the receiving Party may change any or all of its designated representatives by providing written notice of such change(s).



[REDACTED]

## ADDENDUM TO APS – ASU ELECTRIC SUPPLY AGREEMENTS

If to ASU:

Attention: Gerry DaRosa, Arizona State University, PO Box 875112, Tempe, AZ 85287-5112  
[REDACTED]

Attention: Phil Plentzas, Arizona State University, PO Box 875112, Tempe, AZ 85287-5112  
[REDACTED]

Attention: Ben Mitsuda, Arizona State University, PO Box 877405, Tempe, AZ 85287-7405  
[REDACTED]

If to APS:

Attention: Leland Snook, Arizona Public Service, PO Box 53999, MS 9708, Phoenix, AZ 85072  
[REDACTED]

Attention: Usama Shami, Arizona Public Service, PO Box 53999, MS 8028, Phoenix, AZ 85072  
[REDACTED]

6. Further Assurances. APS shall at ASU's request execute all documents, instruments, certifications and attestations reasonably necessary to effect the transfer of the Environmental Attributes to be transferred to ASU under this Addendum.

7. Registrations.

a.

[REDACTED]

b.

[REDACTED]



[REDACTED]

## ADDENDUM TO APS – ASU ELECTRIC SUPPLY AGREEMENTS

c. [REDACTED]

8. Taxes. APS shall bear and pay any and all costs, fees, and expenses, including any and all sales taxes and transaction costs, fees and expenses attributable to or arising from the sale to ASU of the Environmental Attributes under this Addendum. If ASU is required by applicable law to remit or pay taxes, which are APS's responsibility hereunder, APS shall reimburse ASU therefor within 10 business days' after receipt of reasonable evidence from ASU of payment thereof. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under applicable law and for which it timely asserts and diligently pursues such exemption, until final determination thereof.

### J. ASU AND ARIZONA REQUIRED PROVISIONS

1. Nondiscrimination. The Parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
2. Conflict of Interest. If within 3 years after the execution of this Agreement, APS hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in Arizona Revised Statutes (ARS) § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753. ASU shall provide APS a list of employees that would trigger this Conflict of Interest provision within ten (10) days of the execution of this Addendum.
3. Arbitration in Superior Court. As required by ARS § 12-1518, the parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to ARS § 12-133.
4. Records. To the extent required by ARS § 35-214, APS will retain all records relating to this Agreement. APS will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five years after the completion of this Agreement. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by ASU on reasonable notice to APS.
5. Failure of Legislature to appropriate. In accordance with A.R.S. 35-154, ASU acknowledges that if it were to rely solely upon state appropriated funds, it would be at risk of defaulting on its obligations under this Agreement if the state failed to appropriate the necessary funds. ASU will therefore, if necessary, use legally available funds other than state appropriated funds to meet its payment obligations under this Agreement.



[REDACTED]

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6. Confidentiality. The Parties shall agree upon appropriate confidentiality provisions with respect to this Addendum in a separate agreement.
  
7. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). APS warrants that it and its subcontractors comply fully with all applicable federal immigration laws and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. ASU retains the legal right to inspect the papers of any contractor or subcontractor employee who works hereunder to ensure that the contractor or subcontractor is complying with the above warranty



**ADDENDUM TO  
APS – ASU ELECTRIC SUPPLY AGREEMENTS**

**K. EXECUTION**

This Addendum has been executed by the duly authorized representatives of the parties, as set forth below:

<b>ARIZONA PUBLIC SERVICE COMPANY</b>	<b>ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY</b>
Signature 	Signature 
Name        Leland R. Snook	Name        Bruce Nevel
Title         Director, Rates & Rate Strategy	Title        Associate Vice President, Facilities Development and Management
Date Signed 11-18-2015	Date Signed 11-17-15
	Phone # 480-727-5838
	Billing Address Arizona State University P.O. Box 875112 Tempe, AZ 85287-5112
The individual executing this Agreement on behalf of APS represents and warrants: (i) that he or she is authorized to do so on behalf of APS; (ii) that he or she has full legal power and authority to bind APS in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority.	The individual executing this Agreement on behalf of Customer represents and warrants: (i) that he or she is authorized to do so on behalf of the Customer; (ii) that he or she has full legal power and authority to bind the Customer in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority.