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September 9, 2016

Arizona Corporation Commission
DOCKETED

SEP 09 2016

Arizona Corporation Commission
c/o Docket Control
1200 W. Washington
Phoenix, Arizona 85007

DOCKETED BY 

RE: Subpoenas dated August 25, 2016
Docket No. E-01345A-16-0036 and E-01345A-16-0123

Today, APS made several filings with the Arizona Corporation Commission and the Maricopa County Superior Court related to Commissioner Burns' August 25, 2016 subpoenas. This letter is intended to provide context for our actions and included as Attachment A to this letter is a summary of what the Companies have filed today.

Commissioner Burns has stated that the purpose of his inquiry is to ensure that no ratepayer funds are used for political purposes. We agree with this principle, and we have already assured Commissioner Burns multiple times that no APS ratepayer funds are used for political purposes. All the information necessary to verify our assertion is already available to Commissioner Burns through the APS rate review filed on June 1, 2016.

These subpoenas are unlawful, not related to the stated purpose, and are an inappropriate use of subpoena power. And they are timed in a way that creates the perception that they will influence the 2016 ACC election.

APS fully respects the authority of the Arizona Corporation Commission and its individual Commissioners, as granted by the Arizona Constitution and related to their duties. The Commission is clearly entitled to APS information as it relates to setting electric rates. As such, and completely independent of these subpoenas, APS will provide the requested publicly-available APS information to Commissioner Burns on September 15th. APS will also provide the remaining responsive non-public APS information upon the execution of an appropriate confidentiality agreement, as is routine Commission practice for the disclosure of non-public information. This information will demonstrate, yet again, that no ratepayer funds have been used for political purposes.

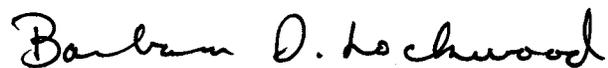
Through his subpoenas, Commissioner Burns is demanding election-related disclosures based on his personal view that support for any particular ACC candidate should be open and transparent. As a citizen, Commissioner Burns is entitled to his view, but as a Commissioner, he is bound to follow the law, and Arizona law does not require the

disclosure he demands. The subpoena is unlawful under the First Amendment and Arizona law, which prohibits officials from using their official positions to harass and retaliate against companies because of perceived political speech. There is no greater evidence of Commissioner Burns' intent to harass than the fact that he targeted only APS and PNW and his further declaration that he will make all of the information public—a threat that can only be intended to infringe on our First Amendment rights.

We are also concerned about the timing of the process initiated by Commissioner Burns, including his pursuit of a public deposition of APS's CEO the week before early voting begins in the general election. Commissioner Burns is clearly campaigning on the disclosure issue with references on his election website to "my battle with APS." The timing of the subpoenas coincides with the critical dates of the 2016 ACC election in which Commissioner Burns is a candidate.

Although we regret that we have reached this impasse, please know that APS will use all legal options available to resist this unlawful subpoena, up to and including, if necessary, appeals to the highest courts.

Sincerely,

A handwritten signature in cursive script that reads "Barbara D. Lockwood". The signature is written in black ink and is positioned above the typed name.

Barbara D. Lockwood

ATTACHMENT A: SEPTEMBER 9, 2016 FILINGS

In Superior Court, two documents were filed:

1. Complaint. This document initiates a lawsuit requesting that a court determine the truth of the Companies' basic claim: that the subpoenas violate the Companies' rights, and that the court should declare that the subpoenas are unlawful and unenforceable.
2. Motion for Preliminary Injunction and Application for Order to Show Cause. This filing asks the court to pause enforcement of the subpoenas until the Companies' lawsuit has been decided. An injunction of this sort ensures that the Companies are not forced to comply with the subpoenas before a decision is made on the legality of the subpoenas themselves. This document also seeks a short procedural conference next week to establish a briefing schedule.

At the ACC, three documents were filed:

1. Motion to Quash the subpoenas. This filed motion asks the full Commission to put a stop to Commissioner Burns' subpoena. The demand for information, documents, and a deposition of a specific corporate representative is unlawful because it was issued for improper and retaliatory purposes in violation of federal and state law. The information demanded has very little or nothing to do with the Commission's ratemaking role, and the record indicates that the subpoenas are intended to deter the companies from participating in the political process in violation of the First Amendment.
2. Motion to Sever. This motion asks that the subpoenas and any related filings (like the Motion to Quash) be moved into a separate docket. Commissioner Burns filed his subpoenas in the docket for APS's current rate case. But adjudicating the subpoenas in APS's rate case docket will unduly expand and delay an already substantial and complex rate case.
3. Letter Objection to Subpoenas. This letter was submitted to Commissioner Burns and it serves as a formal objection to the subpoenas under Rule 45. It outlines the Companies' legal objections to the subpoena, and suspends any obligation to produce documents until the objections are resolved or a court order is issued.