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BEFORE THE ARIZONA CORPORATION COMMISSION

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2017 MAR 14 A.M. 10:01

Arizona Corporation Commission

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MAR 14 2017

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COMMISSIONERS

TOM FORESE – CHAIRMAN

ROBERT BURNS

DOUG LITTLE

ANDY TOBIN

BOYD DUNN

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

~~DOCKET NO. E-01545A-16-0036~~

~~DOCKET NO. E-01545A-16-0100~~

(Also filed in DOCKET NO. RU-00000A-17-0035)

**RESPONSE AND OBJECTION TO  
MOTION TO QUASH, OR, IN THE  
ALTERNATIVE, TO DECLINE TO  
HEAR**

IN THE MATTER OF FUEL AND  
PURCHASED POWER PROCUREMENT  
AUDITS FOR ARIZONA PUBLIC SERVICE  
COMPANY

No response should be necessary to the Motion to Quash, or, In the Alternative, to Decline to Hear (“Motion to Quash”) filed by Arizona Public Service Company and Pinnacle West Capital Corporation because it so obviously seeks actions the Commissioners are constitutionally and statutorily prohibited from providing, that violate the constitutional and

1 statutory rights of Commissioner Robert Burns, and that expose the Commission and its  
2 Commissioners to litigation and claims for relief for actions outside their legal authority and  
3 for violation of Commissioner Burns' rights. There is simply no authority for the  
4 Commissioners to even entertain the highly unusual requests APS and Pinnacle West make to  
5 either quash Commissioner Burns' subpoenas or lock them in some sort of administrative  
6 Limbo. Yet, strange events suggest the possibility that other Commissioners may be called on  
7 by APS and Pinnacle West to try and help them avoid judicial rulings they now fear and to  
8 ~~cover any investigation into~~ their political influence peddling tactics by tripping as many  
9 administrative traps as possible. This objection is filed to continue to preserve Commissioner  
10 Burns' rights, his objections to the Motion to Quash, and to remind the other Commissioners  
11 of their duties to avoid abetting APS's and Pinnacle West's constitutionally void attempts to  
12 shelter activity the Arizona consumers protected by the Corporation Commission are deeply  
13 interested in and may be negatively impacted by.

14 After having recently sought time to supposedly amend their Complaint in the  
15 ~~Maricopa County Superior Court~~, APS and Pinnacle West surprisingly withdrew their claims  
16 against Commissioner Burns in the Maricopa County Superior Court last week, even though  
17 Commissioner Burns has confirmed his intent to seek full compliance with the subpoenas to  
18 APS, Pinnacle West, and Mr. Brandt, their chief executive. Despite withdrawing their lawsuit,  
19 APS and Pinnacle West have stood by their refusal to comply with much of the pending  
20 subpoenas. Recognizing that the continued refusal of APS and Pinnacle West and Mr. Brandt  
21 to obey a lawful command of a sitting Commissioner requires judicial intervention to assure  
22 enforcement, Commissioner Burns initiated a lawsuit in the Maricopa County Superior Court  
23 last week. That action, titled Case No. CV2017-001831, seeks a final judicial declaration  
24 against APS, Pinnacle West and Mr. Brandt that Commissioner Burns had full right and  
25 authority to issue and enforce the subpoenas that are the subject of the Motion to Quash. A  
26 copy of the Complaint in that action (without attached exhibits) is attached as Exhibit "A" to  
27 this filing.

1 Yet, in an uncertain turn, the Commission Chairman, Mr. Forese, added two agenda  
2 items – Item No. 1 and Item No. 2 – to the agenda for the Commission Staff Meeting  
3 scheduled for Tuesday, March 14, 2017, and Wednesday, March 15, 2017. Those agenda  
4 items state:

- 5 1. Commission consideration, discussion and possible vote concerning  
6 legal action between Arizona Public Service Co. and/or Pinnacle  
7 West Capital Corp. and Commissioner Burns and/or the  
8 Commission. – Chairman Forese

9 *The Commission may vote to go into Executive Session pursuant to  
10 A.R.S. § 38-431.03.A(3) and (4), which will not be open to the  
11 public.*

- 12 2. Commission consideration, discussion and possible vote concerning  
13 use of Commission resources for Workshops. – Chairman Forese

14 *The Commission may vote to go into Executive Session pursuant to  
15 A.R.S. § 38-431.03.A(3) and (4), which will not be open to the  
16 public.*

17 Commissioner Burns has no idea what the purpose of these agenda items is, or what the  
18 Chairman has planned for this discussion so cryptically noticed at the eleventh hour.<sup>1</sup> If the  
19 point of the discussion is to simply receive information and legal advice regarding the legal  
20 implications of the new pending lawsuit or the potential joinder in that lawsuit by other  
21 Commissioners or the Commission as a whole, then Commissioner Burns' counsel, as counsel  
22 for the only Commission representative who is an actual party to pending litigation, should be  
23 included and the limited discussion may be conducted in executive session<sup>2</sup>.

24 <sup>1</sup> To the extent the Chairman intends to discuss in Executive Session anything outside the  
25 topics noticed, the generic references to A.R.S. § 38-431.03(3) and (4) would not be sufficient  
26 notice under A.R.S. § 38-431.02(I) (“The agenda shall provide more than just a recital of the  
27 statutory provisions authorizing the executive session . . .”). Nor is it appropriate for the  
28 Commissioners to initiate or make any decisions, poll members on the positions they may  
take, or have any other discussion outside the narrow limits set by the statutory executive  
session exception.

<sup>2</sup> As the Commission is aware, A.R.S. § 38-431.03(B)(2) provides that the discussions at an  
executive session may *not* be kept confidential from any “[m]embers of the public body  
which met in executive session.” A Commissioner, entitled by law to know everything

1 If however, the purpose of the discussion is to somehow discuss and take actions  
2 intended to thwart or interfere with Commissioner Burns' claims and ability to proceed in the  
3 pending Superior Court litigation, then the matter would not be appropriate for executive  
4 session. Especially inappropriate and unlawful under the open meetings laws would be any  
5 attempts to reach any decisions, reach any collective decision or consensus, or obtain any  
6 commitments among the members of the Commission at the executive session regarding the  
7 Motion to Quash or any other action or approach designed to limit or interfere with  
8 Commissioner Burns' investigatory powers. *See Cooper v. Arizona W. College Dist. Governing*  
9 *Bd.*, 125 Ariz. 463, 466-467, 610 P.2d 465, 468-469 (App. 1980); *Hokanson v. High School District*  
10 *No. 8*, 121 Ariz. 264, 589 P.2d 907 (1978).

11 Moreover, Commissioner Burns reasonably worries that Item No. 2 could be targeted at  
12 a workshop he has scheduled and noticed for March 23, 2017 in connection with Docket No.  
13 RU-00000A-17-0035, another docket in which he has filed and is entitled to enforce the  
14 subpoenas to APS, Pinnacle West and Mr. Brandt. Again, Commissioner Burns has no idea  
15 what the purpose of Agenda Item 2 is, has been provided no advance materials or proposals  
16 regarding the same, and does not approve any discussions aimed at limiting his access to  
17 resources for his upcoming workshop. It is possible that the Chairman intends to discuss how  
18 the rest of the Commission can support workshops like the one Commissioner Burns has  
19 scheduled. However, Commissioner Burns has recently faced what appears could be  
20 unprecedented, arbitrary and harmful retribution by having his requests to place items on the  
21 agendas for public meetings of the Commission denied, even though he seeks discussion of  
22 requests by constituent government officials to be heard on matters of apparently great  
23 importance to them and their citizens. While the Commissioner intends to get to the bottom of  
24 this arbitrary betrayal of the Corporations Commission's constituents, it combines with these

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25  
26 discussed at the executive session, is further entitled to share such information in the confines  
27 of their confidential, attorney-client relationship. Moreover, Commissioner Burns' attorney is  
28 acting as counsel for Commissioner Burns' in his official capacity as an elected member of  
the Corporation Commission and is entitled to know what other "legal advice" he is receiving  
from Commission counsel.

1 last-minute, cryptic agenda additions to suggest the possibility of something far more sinister  
2 that might be aimed at both retribution against Commissioner Burns and unjustified and  
3 legally wrongful protectionist efforts in aid of APS and Pinnacle West. It would be shocking  
4 for any individual Commissioners, particularly those whose impartiality has been tainted,  
5 fairly or unfairly, by the questions surrounding large election expenditures in 2014, to act  
6 aggressively, or even surreptitiously, to thwart all investigations into any role by APS and  
7 Pinnacle West in efforts that have already undermined public confidence in the Commission.  
8 Commissioner Burns steadfastly hopes no such issues are in play. Regrettably, however,  
9 recent events have forced Commissioner Burns to clearly air hereby his position in favor of  
10 transparency, objectivity and independence in protection of Arizona's utility consumers and to  
11 preserve his right to demand the same from all other Commissioners.

12 **The Subpoenas Fall Squarely Within the Clearly**  
13 **Established Authority of Any Single Commissioner**

14 The individual Commissioners of the Arizona Corporation Commission, as the elected  
15 officials of the constitutionally-created fourth branch of the government of the State of  
16 Arizona, are expressly empowered by the Arizona Constitution, at Article XV, to issue and  
17 enforce the types of subpoenas at issue in the Motion to Quash. The Arizona Constitution  
18 states, at Article XV, § 4:

19 The corporation commission, *and the several members thereof*, shall have  
20 power to inspect and investigate the property, books, papers, business,  
21 methods, and affairs of any corporation whose stock shall be offered for  
22 sale to the public and of any public service corporation doing business  
23 within the state, and for the purpose of the commission, *and of the several*  
24 *members thereof*, shall have the power of a court of general jurisdiction to  
enforce the attendance of witnesses and the production of evidence by  
subpoena, attachment, and punishment, which said power shall extend  
throughout the state. Said commission shall have power to take testimony  
under commission or deposition either within or without the state.

25 (emphasis added). The Arizona statutes have supplemented that authority. They expressly  
26 acknowledge Commissioner Burns' authority to conduct inspections of the accounts, books,  
27 papers and documents of any public service corporation, and to examine under oath any

1 officer, agent or employee of such corporations in relation to the business and affairs of the  
2 corporation. A.R.S. § 40-421(A).

3 The use of the subpoenas at issue here for the purposes identified by Commissioner  
4 Burns also fall squarely within the express legal authorities of Commissioner Burns, including  
5 those provided at Article XV, § 3 of the Arizona Constitution. That section provides, in  
6 pertinent part:

7 The corporation commission shall have full power to, and shall, prescribe just and  
8 reasonable classifications to be used and just and reasonable rates and charges to be  
9 made and collected, by public service corporations within the state for service rendered  
10 therein, and make reasonable rules, regulations, and orders, by which such corporations  
11 shall be governed in the transaction of business within the state, and may prescribe the  
12 forms of contracts and the systems of keeping accounts to be used by such corporations  
in transacting such business, and make and enforce reasonable rules, regulations, and  
orders for the convenience, comfort, and safety, and the preservation of the health, of  
the employees and patrons of such corporations;

13 The express constitutional powers of the Arizona Corporation Commission therefore include  
14 the making of reasonable rules, regulations and orders by which APS shall be governed in the  
15 transaction of its Arizona business, the regulation of rates and charges by APS, and the making  
16 and enforcement of reasonable rules, regulations and orders for the convenience, comfort,  
17 safety and health of the customers of APS. *See Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-  
18 812 (1992). As outlined in the allegations and arguments of the Complaint attached as  
19 Exhibit "A" and incorporated in full herein, the subpoenas are being properly utilized for  
20 purposes falling within these express authorities.

21 Thus, there is nothing unusual or exceptional about the subpoenas. The Arizona  
22 framers established constitutional expectations that the Commissioners would behave as  
23 trained, capable and conscientious commissioners, act reasonably in light of the facts and  
24 issues presented to them, and be unbiased, objective and accountable to the voters who elect  
25 them and the consumers they primarily serve, with no member subject to corporate influences  
26 that might alter them from a pure focus on ascertaining the truth and facts of a matter within  
27 their jurisdiction. *See, e.g., Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 305-306, 138 P.  
28 785-786. Commissioner Burns' actions are not only authorized, but are vital to carry out the

1 independent and objective examination of issues and development of rates, policies and rules  
2 within the central authority and responsibilities of the office Arizonans elected him, and the  
3 other Commissioners, to fulfill.

4 As the Commissioners should also be aware, the Attorney General of the State of  
5 Arizona has issued his opinion confirming Commissioner Burns' individual authority to issue  
6 the subpoenas at issue here. *See* Op. Ariz. Atty. Gen. No. I16-005 (R16-002). This doubly  
7 affirms that the Motion to Quash is legally meritless.

8 Any efforts by other Commissioners to deter, limit or undermine Commissioner Burns'  
9 fulfillment of his constitutional and statutory duties and authorities will interfere with the  
10 rights he has earned by the election to his office, not to mention his rights to judicial due  
11 process and free expression under federal and state law. Thus, the Motion to Quash is APS's  
12 and Pinnacle West's attempt to enlist other Commissioners in a scheme to obstruct a lawful  
13 inquiry, and to facilitate, aid and abet unjustified non-disclosure through a violation of  
14 Commissioner Burns' individual and official rights and authorities. The other Commissioners  
15 have no right to facilitate such abuses, and will only justify actions against the Commission  
16 and even themselves individually should they follow APS's and Pinnacle West's lead.

17 **APS and Pinnacle West Have Tried to Sell a False Story of Persecution and**  
18 **Retaliation for Political Speech**

19 As the Commissioners are aware, Commissioner Burns has not engaged in any  
20 campaign of harassment. APS is a regulated monopoly whose very existence and business  
21 income depends on the consent of the State to its monopoly in return for its reciprocal  
22 agreement to be subject to the regulation of the Commission consistent with its broad  
23 authorities to review the records and information about APS and its affiliated operations. It is  
24 hardly harassment to demand that APS and Pinnacle West reveal the campaign support and  
25 other political influence-generating mechanics they finance with the revenues that captive  
26 Arizona utility customers pay them. And, it should sound as strident to the other  
27 Commissioners as it surely does to the utility consumers of Arizona who are forced to use  
28

1 APS's services that APS and Pinnacle West should so aggressively ignore their compact with  
2 the State and its citizens and hide behind false charges of "harassment".

3 Nor are Commissioner Burns' subpoenas somehow retaliatory or aimed at substantively  
4 restraining true political speech. There is nothing unconstitutional about transparency and  
5 disclosure requirements, even for political spending by corporate entities. That was confirmed  
6 by agreement of eight of the nine U.S. Supreme Court justices in *Citizens United v. Federal*  
7 *Election Commission*, 558 U.S. 310 (2010) who did not abandon the federal courts' historic  
8 consensus about the importance, and constitutionality, of transparency requirements  
9 concerning political donations. Rather, they agreed that disclosure on funding issues is  
10 important because "transparency enables the electorate to make informed decisions and give  
11 proper weight to different speakers and messages."

12 The continued vitality of those objectives means there exist many constitutionally  
13 permissible alternatives for ensuring the public adequate transparency and accountability in  
14 connection with corporate financial activities that could create undue influence with ACC  
15 candidates or the Commissioners, or that are funded using monies generated from utility  
16 customers. The fact that APS and Pinnacle West want to avoid the voting public holding their  
17 financially favored candidates accountable for their ties to APS and Pinnacle West raises no  
18 constitutional issues. It should, conversely, create a significant distrust in all Commissioners  
19 who have pledged to honor the objectivity, independence and truth-seeking duties  
20 constitutionally expected of them.

21 **Commissioner Burns Has Already Appropriately Invoked the Legal Rights and**  
22 **Judicial Process to Which Arizona Law Entitles Him**

23 If indeed the two items so recently added to this week's Staff Meeting agenda are aimed  
24 at limiting, thwarting or undermining Commissioner Burns' enforcement of the subpoenas, or  
25 if the other Commissioners attempt to use APS's and Pinnacle West's Motion to Quash as  
26 cover for any such actions, they will be interfering improperly and unlawfully with  
27 Commissioner Burns' rights under the Constitution and statutes of Arizona, including the  
28 Arizona Uniform Declaratory Judgments Act, and his already-invoked judicial rights to have



1 his dispute with APS, Pinnacle West and Mr. Brandt heard and decided by the Courts of this  
2 State. The authorities of the Commission and the other Commissioners do not extend to  
3 robbing the courts of jurisdiction of a properly initiated legal proceeding, or robbing a sitting  
4 Commissioner of the rights he has already invoked through that proceeding to have his rights  
5 and authorities declared and enforced by the Arizona courts. Any action to approve or grant  
6 the Motion to Quash or otherwise create an administrative disruption impacting the pending  
7 court case would violate Commissioner Burns' rights to petition the government for redress of  
8 grievances, his right to obtain due process of law, his right to free expression, and his rights  
9 under the Constitution and the laws of Arizona to have his rights declared and enforced. Such  
10 interference would expose the Commission and responsible individual Commissioners to  
11 personal liability or judicial relief, including under appropriate federal law.

12 **Questions of Confidentiality Can Be Managed and Provide No Grounds for Quashing or**  
13 **Otherwise Interfering with the Subpoenas**

14 The arguments APS and Pinnacle West make regarding "confidentiality" are also a red  
15 herring. First and foremost, they have not even identified what types of records or information  
16 they believe would qualify for specific protection under Arizona law, and they ignore the  
17 substantial policies under Arizona law encouraging proceedings of agencies like the  
18 Corporation Commission to be subject to public inspection and accountability. *See, e.g.,*  
19 A.R.S. § 38-431.01 ("All meetings of any public body shall be public meetings and all persons  
20 so desiring shall be permitted to attend and listen to the deliberations and proceedings. All  
21 legal actions of public bodies shall occur during a public meeting."); A.R.S. § 38-421; A.R.S.  
22 § 39-121, *et seq.* The law provides clear, limited exceptions where confidentiality is  
23 authorized, but those exceptions cannot be determined except in the context of specific records  
24 or information. There are no entirely blanket exceptions, and it would be an arbitrary and  
25 capricious act and abuse of discretion for any Commissioner to act on some ambiguous,  
26 speculative and unsupported allegation by APS or Pinnacle West that what they would be  
27 forced to disclose if they complied with the subpoenas would be somehow confidential. If they  
28 have specific documents, records or information to identify and request protection for, let them

1 tell the Commission what they are and prove they are deserving of confidentiality under the  
2 law. That same process is invoked by Arizona litigants every day across this state and has  
3 served Arizona parties fairly. Their refusal to follow this simple process should be cause for  
4 alarm.

5 Moreover, even if APS or Pinnacle West has records that could qualify for some  
6 protection from full public disclosure, that does not mean they are not subject to disclosure to  
7 the Commissioners. Thus, the “confidentiality” concerns are a red herring and could never  
8 support some sort of blanket refusal to produce records or testimony. At best they could  
9 justify a bit-by-bit discussion of particular records and information, and management of any  
10 legitimate confidentiality concerns through appropriate confidentiality procedures.

11 Finally, the dispute is currently pending before another branch, the courts, which are  
12 empowered to hear and decide certain discovery disputes, including confidentiality concerns.  
13 It is common in litigation for parties to obtain protective orders to address the very types of  
14 public disclosure issues APS and Pinnacle West assert. The Commissioners should leave such  
15 decisions to the courts to manage per well-established legal rules and procedures.

#### 16 **CEO Brandt Remains an Appropriate Deponent**

17 APS and Pinnacle West argue, without proof, that their chief executive Donald Brandt  
18 is an inappropriate deponent because lower level employees can answer Commissioner Burns’  
19 questions. But the questions in this matter involve the potential diversion of millions and  
20 millions of dollars earned originally through utility customers to political and charitable  
21 contributions – the type of strategic distributions of funds that would logically require the  
22 highest levels of executive direction and decision-making. Moreover, Pinnacle West has  
23 published a Political Participation Policy, available at [http://www.Pinnaclewest.com/about-  
24 us/corporate-governance/Political-Participation-Policy/default.aspx](http://www.Pinnaclewest.com/about-us/corporate-governance/Political-Participation-Policy/default.aspx) that states, in pertinent  
25 part, that with respect to political expenditures, all “[c]orporate contribution decisions are  
26 made primarily by our Vice President, Federal Affairs, and Vice President, State and Local  
27 Affairs, who “typically receive input from other members of our senior management team,  
28 *including our Chief Executive Officer [Mr. Brandt].*” (emphasis added). Moreover, Pinnacle

1 West acknowledged in its 2016 10-K Form filed with the SEC that it had received federal  
2 grand jury subpoenas which “seek information principally pertaining to the 2014 statewide  
3 general election races in Arizona for Secretary of State and for positions on the ACC” and  
4 “request records involving certain Pinnacle West officers and employees, *including the*  
5 *Company’s Chief Executive Officer . . .*” (emphasis added). Thus, it is highly disingenuous  
6 for APS and Pinnacle West to suggest Mr. Brandt would not have a central role and is not a  
7 key witness in the issues about campaign or other spending tactics addressed by the subpoenas.

8 Moreover, APS and Pinnacle West have not come forward with proof that there are  
9 others who might be better or more appropriately situated to answer such questions than the  
10 individual they admit in written policy is among those senior management members  
11 “typically” providing input on where to contribute company funds. The suggestion that  
12 Commissioner Burns has somehow arbitrarily targeted Mr. Brandt is false – Pinnacle West and  
13 APS, through their own records, have highlighted his role as a central witness to the relevant  
14 issues.

### 15 CONCLUSION

16 Commissioner Burns contends that the legal defects in the Motion to Quash are so  
17 obvious that they should be noted *sua sponte* by Commissioners so well trained in the  
18 authorities and responsibilities of Commission members. Also, Commissioners dedicated to  
19 the independent, objective, and unbiased analysis commanded by their constitutional station  
20 and the expectations of fairness, thoroughness and accountability demanded by the Arizona  
21 voters who elected them should express no hesitancy requiring compliance with the subpoenas  
22 at issue here. After all, such minimal disclosure and accountability to the elected regulators of  
23 Arizona’s fourth branch of government is the least that should be expected of a monopoly  
24 utility, the parent affiliate who earns the vast majority of its revenues from that public grant of  
25 monopoly status, and its executives who are handsomely rewarded with compensation,  
26 including bonuses, paid using revenues that come from Arizona utility consumers.  
27 Commissioner Burns remains hopeful his fellow Commissioner elect not to unlawfully  
28 interfere with his rights or try and deny him the right to pursue appropriate judicial relief.

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For all the reasons set forth above, and in Commissioner Burns' Complaint attached as Exhibit "A", the Motion to Quash must be denied.

DATED this 14th day of March, 2017.

BASKIN RICHARDS PLC



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Filed in Docket Nos.  
E-01345A-16-0036, E-01345A-16-0123  
and RU-00000A-17-0035) this  
14<sup>th</sup> day of March, 2017.

# **EXHIBIT "A"**

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11 *Attorneys for Plaintiff*  
12 *Commissioner Robert Burns*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 COMMISSIONER ROBERT BURNS, a  
12 member of the Arizona Corporation  
13 Commission, in his official capacity,  
14  
15 Plaintiff,

Case No.  
  
**COMPLAINT**  
**(Declaratory Judgment)**

15 v.  
16 ARIZONA PUBLIC SERVICE COMPANY,  
17 an Arizona public service corporation, and  
18 PINNACLE WEST CAPITAL  
19 CORPORATION, an Arizona corporation, and  
20 DONALD BRANDT, an individual,  
21  
22 Defendants.

23 For his Complaint seeking a final judgment declaring his rights and authority as an  
24 elected Commissioner of the Arizona Corporation Commission to compel compliance by the  
25 Defendants with subpoenas issued by him in his official capacity and pursuant to his express  
26 authority under the Constitution and laws of the State of Arizona, Plaintiff Commissioner  
27 Robert Burns ("Commissioner Burns") alleges as follows:  
28

1 **The Parties**

2 1. The Arizona Corporation Commission is a governmental body of the State of  
3 Arizona, created and empowered through the Constitution and the laws of the State of  
4 Arizona.

5 2. The Arizona Constitution, at Article XV, Section 1(B) creates the Corporation  
6 Commission, to be composed of five persons who shall be elected at the general election of the  
7 voters of Arizona.

8 3. Plaintiff Commissioner Robert Burns is a duly elected Commissioner of the  
9 Arizona Corporation Commission.

10 4. By virtue of the office to which the voters of Arizona have elected him,  
11 Commissioner Burns is vested with all those authorities and delegated powers enumerated in  
12 and implied by the provisions of the Arizona Constitution and the laws and judicial precedent  
13 of the State of Arizona for his elected position.

14 5. By virtue of his office as a Commissioner, Commissioner Burns is authorized to  
15 seek judicial relief when a member of the public attempts to interfere with or to refuse to  
16 comply with the duly authorized exercise of the authorities and responsibilities of his office.

17 6. Where such attempts involve the intentional refusal of a monopoly corporation  
18 subject to regulation by the Arizona Corporation Commission, its affiliate corporation, or its  
19 officers to comply with a lawful subpoena or other investigatory directive of his office,  
20 Commissioner Burns is authorized to seek, pursuant to the Arizona Uniform Declaratory  
21 Judgments Act, A.R.S. § 12-1831, *et seq.* and the constitutional and other laws of the State of  
22 Arizona, a judicial declaration confirming his authority to order compliance with such  
23 subpoenas or other investigatory directives.

24 7. Defendant Arizona Public Service Company ("APS") is an Arizona public  
25 service corporation that provides either retail or wholesale electric service to a large portion of  
26 the State of Arizona. APS has conducted business in the State of Arizona, and in Maricopa  
27 County in particular, at all times relevant to the allegations of this Complaint.  
28

1           8.     APS has taken actions in Maricopa County, Arizona from which the allegations  
2 of this Complaint arise.

3           9.     Defendant APS is also a regulated monopoly organization subject to regulation  
4 by the Arizona Corporation Commission.

5           10.    As a result of the business advantages provided to APS through its status as a  
6 monopoly electric service provider, APS has become one of Arizona's largest commercial  
7 enterprises.

8           11.    Defendant Pinnacle West Capital Corporation ("Pinnacle West") is a publicly  
9 traded corporation incorporated in Arizona. Pinnacle West has done business at all times  
10 relevant to the allegations in this Complaint in the State of Arizona, and in Maricopa County in  
11 particular.

12          12.    Pinnacle West has taken actions in Maricopa County, Arizona from which the  
13 allegations of this Complaint arise.

14          13.    In the U.S. Securities and Exchange Commission Form 10-K filed jointly for  
15 Pinnacle West and APS for the fiscal year ended December 31, 2016, Pinnacle stated:

16               Pinnacle West is a holding company that conducts business through its subsidiaries. We  
17 derive essentially all of our revenues and earnings from our wholly-owned subsidiary,  
18 APS. APS is a vertically-integrated electric utility that provides either retail or  
19 wholesale electric service to most of the State of Arizona, with the major exceptions of  
about one-half of the Phoenix metropolitan area, the Tucson metropolitan area and  
Mohave County in northwestern Arizona.

20          14.    Pinnacle West reported operating revenues on its consolidated financial  
21 statements for 2016 of over \$3.49 billion, with net income attributable to common  
22 shareholders of over \$442 million. It further reported electric operating revenues for APS in  
23 2016 of over \$3.48 billion, and net income to APS for 2016 of over \$462 million.

24          15.    Pinnacle West further reported on its 2016 consolidated financial statements  
25 having over \$16 billion in total assets, with over \$15.9 billion in assets held by APS.

26          16.    Defendant Don Brandt ("Brandt") is the Chairman of the Board, President and  
27 Chief Executive Officer of Pinnacle West, and he is also the President and Chairman of the  
28



1 Board of APS. On information and belief, Mr. Brandt works in Maricopa County, Arizona,  
2 and has done so at all times relevant to the claim in this action.

3 17. Defendant Brandt has taken actions in Maricopa County, Arizona from which  
4 the allegations of this Complaint arise.

5 18. According to the 2016 Proxy Statement of Pinnacle West, Pinnacle West and  
6 APS have adopted incentive plans that provide for Mr. Brandt and other executives of Pinnacle  
7 West or APS to achieve substantial annual incentive compensation tied to corporate earnings  
8 and/or to target performance levels for various business units of APS. On information and  
9 belief, such plans provide personal incentives to Pinnacle West and APS executives to increase  
10 earnings of the APS regulated monopoly.

11 19. Judging by the placement of its logos and name on such items as buildings,  
12 announcements, programs, trash cans, signs and other locations, APS is one of the largest  
13 supporters of public events in Arizona. On information and belief, Pinnacle West contends  
14 that the monies used to create such an impression are from Pinnacle West and not from APS.  
15 Even if that is true, the clear intent of the donations is to create the public impression that APS  
16 has provided substantial backing to charitable or civic events.

17 20. On information and belief, the contributions made to create public credit through  
18 perceptions of financial support by APS can or have been used by Defendants APS and  
19 Pinnacle West as a tool to engender and leverage political support and lobbying-type efforts in  
20 support of APS's and Pinnacle West's financial or political objections and interests.

21 21. According to the statement of Defendant Don Brandt given to Pinnacle West  
22 shareholders on May 20, 2015, APS made in the prior year "\$10 million in APS charitable  
23 contributions".

24 22. On information and belief, Pinnacle West and APS also make much of their  
25 financial contributions to charitable organizations or other groups or events through Pinnacle  
26 West. Also on information and belief, APS does not report contributions made by Pinnacle  
27 West for support of charitable organizations or public events to the Arizona Corporation  
28 Commission, even where such contributions result in sponsorship credit or marketing benefits

1 for APS. Nothing in the law prevents APS or Pinnacle West from reporting or disclosing to  
2 the Arizona Corporation Commission the substantial sums paid for support or sponsorship of  
3 events, buildings or organizations for which APS is credited as a sponsor or in connection with  
4 which the APS name or logo are prominently displayed.

5 23. On information and belief, APS and Pinnacle West spend large sums of money  
6 on a regular basis engaging the services of marketing personnel, lobbying personnel, and/or  
7 political strategists for the benefit of APS.

8 24. On information and belief, much of the sums paid to support the lobbying,  
9 marketing and political activities directly and indirectly benefitting APS are ostensibly paid  
10 through Pinnacle West, and the payment of such sums are not therefore reported to the  
11 Arizona Corporation Commission by APS.

12 25. On information and belief, nothing in the law prevents APS or Pinnacle West  
13 from publicly disclosing, or from reporting to the Arizona Corporation Commission, who is  
14 being paid for all lobbying, marketing and political activities benefitting APS, how much they  
15 are being paid, and the precise nature of all activity conducted through such arrangements for  
16 the benefit of APS.

17 26. In 2014, some person(s) or some entity(ies) made unprecedented financial  
18 contributions in support of the election of two Commission candidates through advertising  
19 paid for by two 504(c)(4) independent expenditure groups ("IEGs"). On information and  
20 belief, the independent expenditure groups were Save Our State Now and the Arizona Free  
21 Enterprise Club. It has been reported that the two IEGs spent some \$3.2 million on advertising  
22 related to the 2014 Corporation Commission election.

23 27. Reason exists to believe that the unprecedented level of spending in support of  
24 Commission races was materially facilitated by contributions from, or facilitated by, Pinnacle  
25 West. For instance, in his address before the Thirtieth Annual Meeting of Shareholders of  
26 Pinnacle West on May 20, 2015, which address Pinnacle West put in writing, Defendant  
27 Brandt made the following statements:

28 In 2014, the solar leasing companies went a step further, supporting two  
candidates for the Arizona Corporation Commission on an explicitly anti-APS

1 platform. *This caused us to reevaluate how to ensure the interests of APS*  
2 *customers, employees, communities and shareholders are represented in the*  
3 *political process.*

4 Whenever we make the decision to support a candidate or cause, we follow the  
5 laws regarding campaign contributions and disclosure.

6 (Emphasis added). Defendant Brandt's comments indicated Pinnacle West and APS  
7 executives did at times take actions supporting particular candidates or political causes, and  
8 that they considered the need to become directly engaged in the 2014 Commission election to  
9 combat campaign support purportedly being provided by solar leasing industry companies.

10 28. On information and belief, Pinnacle West and APS have not publicly and clearly  
11 admitted that their executives or monies had anything to do with the 2014 independent  
12 expenditure group spending on Commission races. Rather, the Defendants contend that they  
13 have no obligation to answer to the Corporation Commission whether they were involved with  
14 those expenditures.

15 29. However, members of the press and constituents of Commissioner Burns have  
16 raised substantial concerns that Pinnacle West and/or APS were meddling in the 2014  
17 campaign in support of candidates they preferred. On information and belief, substantial  
18 concerns have been raised in press reports that such contributions would create undue  
19 influence over the Commissioners elected with the independent expenditure groups' backing.

20 30. Even the appearance that Pinnacle West or APS executives have thrown material  
21 financial support behind a candidate for a Commission seat can be disruptive, can bring  
22 disrepute on the Commission, makes the public question the integrity of the Commission and  
23 the Commissioners, makes Arizona consumers, including those impacted by APS's service  
24 rates, question whether the rate-setting and other regulatory determinations of the Corporation  
25 Commission are made with appropriate objectivity and independence and focus on the  
26 consumer, and can undermine the operations of the Commission seeking to protect the interest  
27 of consumers.

28 31. On information and belief, Pinnacle West and/or APS executives intend to  
continue making political contributions, charitable contributions, and other payments or

1 contributions that can be used to influence and/or provide material financial support to  
2 Commission candidates, Commissioners, or those close to them.

3 32. In fact, Pinnacle West has published a current public pronouncement of its  
4 political participation policies. As of January, 2017, Pinnacle West has published at  
5 [http://www.Pinnaclewest.com/about-us/corporate-governance/Political-Participation-  
7 Policy/default.aspx](http://www.Pinnaclewest.com/about-us/corporate-governance/Political-Participation-<br/>6 Policy/default.aspx) a Political Participation Policy. On information and belief, the Political  
8 Participation Policy is intended to cover political contributions and support by or for the  
9 benefit of APS as well as Pinnacle West.

10 33. The APS and Pinnacle West Policy expressly acknowledges: 1) "Because  
11 Pinnacle West and APS participate in a wide range of business activities to fulfill this  
12 responsibility [to "provide customers in our service territory with safe, reliable and affordable  
13 electricity"], policy decisions at the federal, state and local levels can have profound impacts  
14 on virtually all aspects of our business"; and 2)"[w]e have a responsibility to our customers,  
15 communities and shareholders to participate in the political process, when appropriate, so that  
16 our perspectives are heard and so that we can develop productive working relationships with  
17 governmental decision-makers."

18 34. The Policy further states that Pinnacle West is committed to "corporate  
19 citizenship" activities which include "sponsoring a political action committee and, where  
20 permitted by law, considering the contribution of corporate funds to political candidates,  
21 political parties, political action committees, and organizations that engage in political  
22 activities", and that such activities "may also include independent expenditures, or the  
23 sponsoring of a political action committee that engages in independent expenditures, in  
24 relation to the elections of candidates to office, get-out-the-vote efforts, and ballot initiatives  
25 and referenda."

26 35. The Political Participation Policy further states:

27 In addition, we actively promote the economic health of the jurisdictions we serve  
28 through our activities with chambers of commerce. Pinnacle West supports many  
charitable and non-profit organizations that support a variety of community and  
educational endeavors. These organizations, in turn, are at times actively involved  
in promoting social welfare missions to our elected leaders. Depending on their

1 roles, any of these organizations may be subject to lobbyist registration and  
2 disclosure reporting obligations, with their reports made public by federal and  
state agencies overseeing lobbying activities.

3 36. The Political Participation Policy further establishes a Pinnacle West Political  
4 Action Committee, describes its operations, and further expresses that all “[c]orporate  
5 contribution decisions are made primarily by our Vice President, Federal Affairs, and Vice  
6 President, State and Local Affairs, who “typically receive input from other members of our  
7 senior management team, including our Chief Executive Officer [Defendant Brandt].”

8 37. Thus, APS and Pinnacle West have admitted that decisions made by ACC  
9 Commissioners, as key governmental decision-makers, can have “profound impacts” on APS’s  
10 business operations. They have further admitted that they intend to create relationships of  
11 influence through participation in the political process. Some actions could include potentially  
12 making financial contributions in support of or benefitting candidates for Commission seats.  
13 On information and belief, all such activities are intended to promote the business interests of  
14 APS and Pinnacle West, including further enhancing the income of executives of the two  
15 companies, and increasing net revenues and income.

16 38. APS and Pinnacle West have also admitted that Pinnacle West intends to keep  
17 making contributions in support of “charitable and non-profit organizations” who may be  
18 subject to lobbyist registration and who can promote “social welfare missions” to  
19 Commissioners or other elected leaders.

20 39. APS and Pinnacle West have also through the Political Action Policy admitted  
21 that Defendant Brandt and other senior executives of the companies play a direct role in  
22 helping determine how Pinnacle West funds are distributed to politically-related activities that  
23 could be used to influence a Commissioner, Commission candidate or Commission staff.

24 40. Without open and detailed disclosure concerning the contributions and payments  
25 made by or for the benefit or financial well-being of APS, including all those contributions  
26 ostensibly made through Pinnacle West, and without a detailed exposure of the process by  
27 which such contributions and payments are made, or by which Pinnacle West and APS may  
28 threaten to end such support, it is impossible for the elected Commissioners and their staff to

1 assess whether APS and Pinnacle West are properly categorizing such payments or  
2 contributions as non-APS monies. It is also impossible for the elected Commissioners and  
3 their staff to assess if such payments or contributions contribute to or impact service rates  
4 passed on to APS customers, and whether further rules or regulations in connection with such  
5 payments or contributions could result in a reduction of consumer electric service rates, a  
6 reduction in economic pressures for APS and Pinnacle West to try and increase rates, or other  
7 positive economic outcomes for APS customers.

8 41. For instance, given the pressures on APS and Pinnacle West executives to  
9 increase both their own personal income, as well as income per share and other economic  
10 performance aspects of APS and Pinnacle West, it is possible that the reduction of millions of  
11 dollars in ostensible charitable contributions, marketing costs, lobbying costs, campaign  
12 support or other political activity costs, even on the Pinnacle West budget, would encourage or  
13 allow APS and Pinnacle West executives to develop greater efficiencies in delivery of service  
14 and reduce costs to customers without sacrificing their desired financial performance. Without  
15 full and detailed disclosure regarding the types of financial contributions and payments  
16 referenced above, the Commissioners and their staff cannot identify and work to implement  
17 such potentially critical cost saving regulations benefitting Arizona consumers.

18 42. Moreover, without full, timely and detailed disclosures by APS and Pinnacle  
19 West of the types of contributions and payments referenced above, the Corporation  
20 Commission and its individual Commissioners are robbed of their ability to inform Arizona  
21 consumers and stakeholders who can in turn use such information to advocate for themselves  
22 with Commissioners, Commission staff or even APS or Pinnacle West officials in an effort to  
23 reduce overall costs to consumers. Thus, the refusal of APS and Pinnacle West to provide  
24 such full, timely and detailed disclosures are negatively impacting Commissioner Burns'  
25 ability to inform constituents in the manner to which they are entitled and to provide them the  
26 type of information Arizona's constitutional framers expected could be made available to them  
27 to protect them against undue corporate utility influence in the rate setting and utility delivery  
28

1 process, waste of resources driving costs to consumers higher, and even forced political  
2 speech.

3 43. Given Pinnacle West's and APS's admissions that most all of Pinnacle West's  
4 business revenue and income comes from fees collected by APS from its Arizona customers,  
5 the amounts being used by Pinnacle West and/or APS to make political, charitable, lobbying,  
6 marketing or other similar contributions or payments as outline above are initially generated as  
7 fees from APS customers. These facts create a material risk that APS and Pinnacle West have  
8 or will enlist the assistance or compliance by the Corporation Commission in compelled  
9 political speech in violation of the federal and state constitutions.

10 44. If, for example, APS insists on particular expense calculations or income targets  
11 as part of its rate applications knowing or desiring particular levels of revenues or income for  
12 use in political, lobbying, campaign, charitable or marketing type activities as described above,  
13 then the rates being charged to APS customers may be set, in part, based on the need to and  
14 plan to fund particular political speech selected and targeted by the executives of APS and  
15 Pinnacle West. These circumstances create a real and palpable risk that the Commissioners  
16 will, knowingly or unknowingly, impose costs on customers that are intended to support the  
17 political speech activities of APS and Pinnacle West, including speech that the customers may  
18 not agree with. Such compelled speech could result in violations of the constitutional rights of  
19 Arizona consumers whose rights the Commissioners are elected and sworn to protect.

20 45. The Commissioners are unable to assess the risks of such compelled political  
21 speech without full, timely and detailed disclosures of what contributions and payments APS  
22 or Pinnacle West make, how such contributions are planned, determined and made, and how  
23 those contributions and payments impact the amounts sought by APS in ratemaking or rate  
24 adjustment proceedings before the Corporation Commission.

25 46. Without such full, timely and detailed disclosures the Commissioner are also  
26 unable to assess, evaluate, and structure rate making procedures, standards or rules that are  
27 needed to eliminate the risk of compelled political speech for Arizona's utility consumers.  
28

1           47. Without such full, timely and detailed disclosures to the Commissioners, the  
2 Commissioners are unable to provide the type of detailed information needed by Arizona  
3 utility consumers to enable such consumers to advocate for themselves, challenge  
4 circumstances that threaten to violate their constitutional rights against compelled political  
5 speech, and promote the adoption of appropriate procedures, standards or rules to prevent such  
6 violations of their rights.

7                                   **Commissioner Burns' Authorities as a Commissioner**  
8                                   **of the Arizona Corporation Commission**

9           48. The Arizona Corporation Commission is Arizona's unique fourth branch of state  
10 government, whose elected members are delegated and imbued with a unique combination of  
11 Arizona's sovereign executive, legislative and judicial powers. *See, e.g.* Ariz.Const., art. XV,  
12 §§ 3-5, 13-14, 17, 19; *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 305, 138 P.  
13 781, 785 (1914) ("The functions of the Corporation Commission are not confined to any of the  
14 three departments named [legislative, executive and judicial branches], but its duties and  
15 powers pervade them all . . ."); *see Ariz. Corp. Comm'n v. Ariz. ex rel. Woods*, 171 Ariz. 286, 290-  
16 291, 830 P.2d 807, 811-812 (1992) ("*Woods*"); *Arizona Corporation Commission v. Superior*  
17 *Court*, 105 Ariz. 56, 459 P.2d 489 (1969); *Selective Life Insurance Co. v. Equitable Life*  
18 *Assurance Society*, 101 Ariz. 594, 422 P.2d 710 (1967).

19           49. The powers vested by Arizona's framers in the Arizona Corporation  
20 Commission are, at least in part, "supreme" and may not be invaded by the other branches of  
21 government. *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 306 ("While [the  
22 Commission] is not so named, it is, in fact, another department of government, with powers  
23 and duties as well defined as any branch of the government, and where it is given exclusive  
24 power it is supreme. Its exclusive field may not be invaded by either the courts, the legislative  
25 or executive.")

26           50. The Arizona Corporation Commission is one of only a relatively few such state  
27 entities created by constitutional command, and only one of a minority of such state entities  
28 with elected commissioners. This unique history and make-up presents the opportunity for the



1 robust, independent decision-making intended by Arizona's constitutional framers. Unlike  
2 executive officers appointed or hired by the Governor or the agencies the Governor oversees,  
3 the Commissioners are directly elected and accountable to the voters of Arizona.

4 51. According to the legislative history of the Arizona Constitutional Convention,  
5 the Arizona Corporation Commission was created to overcome the paralyzing influence large  
6 corporations had already proven adept at wielding in traditional legislative and judicial  
7 arrangements.

8 52. To overcome recognized issues with corporate influence and insulation, the  
9 Arizona framers created an entirely separate branch of state government "vested with broad  
10 powers to regulate the activities of 'public service corporations,' defined to include private  
11 utilities and common carriers." Leshy, *Making of the Arizona Constitution, supra*, at 88;  
12 Ariz.Const., art. XV. The position occupied by Commissioner Burns is therefore part of the  
13 Arizona constitutional regulatory check on the powers of corporations, particularly regulated  
14 monopoly utilities.

15 53. The Arizona framers also intended that the Commissioners provide a uniquely  
16 protective form of governmental machinery assigned powers "primarily for the interest of the  
17 consumer." *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 308, 138 P. at 786.

18 54. According to the Supreme Court of the State of Arizona: "The founders  
19 expected the Commission to provide both effective regulation of public service corporations  
20 and consumer protection against overreaching by those corporations. *Constitutional*  
21 *Convention, supra*, at 612-15, 967-81; Engelby, *supra*, 20 Ariz.St.L.J. at 242-43. The  
22 progressive and labor forces, two strong ideological influences at the constitutional  
23 convention, combined to promote strong commission authority to regulate corporations,  
24 although the strongest power ultimately was limited to regulation of public service  
25 corporations [like APS]." *Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-812 (citing Leshy,  
26 *Making of the Arizona Constitution, supra*, at 88; *APS II*, 157 Ariz. at 535, 760 P.2d at 535  
27 (citing and quoting Gordon Morris Bakken, *The Arizona Constitutional Convention of 1910*,  
28 1978 Ariz.St.L.J. 1, 15 (1978))).

1           55. The Supreme Court of the State of Arizona has further held that the language of  
2 Arizona's Constitution at Article XV, § 3, establishing the broad powers of the Commission  
3 "were designed to promote both democratic control and competitive economic forces." *Woods*, 171  
4 Ariz. at 291, 830 P.2d at 811 (citing Leshy, *Making of the Arizona Constitution, supra*, at 89-90).

5           56. Arizona voters have protected the independence of the Commission -- especially  
6 its provisions regarding election of commissioners -- from constitutional amendment on  
7 numerous occasions. *See Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-812 (citing John D. Leshy,  
8 *The Arizona State Constitution: A Reference Guide* (prepublication manuscript 1991), at 629)).

9           57. The relationship between the Arizona Corporation Commission and APS  
10 includes APS's status as a regulated monopoly under which it has contracted to make adequate  
11 investment and render competent and adequate service in the public interest, and to subject  
12 itself to the regulatory powers and directives of the Arizona Corporation Commission, in  
13 return for a privilege of monopoly against other private utilities.

14           58. The Arizona Constitution at Article XV, § 3 provides, in pertinent part:

15           The corporation commission shall have full power to, and shall, prescribe just and  
16 reasonable classifications to be used and just and reasonable rates and charges to be  
17 made and collected, by public service corporations within the state for service rendered  
18 therein, and make reasonable rules, regulations, and orders, by which such corporations  
19 shall be governed in the transaction of business within the state, and may prescribe the  
20 forms of contracts and the systems of keeping accounts to be used by such corporations  
in transacting such business, and make and enforce reasonable rules, regulations, and  
orders for the convenience, comfort, and safety, and the preservation of the health, of  
the employees and patrons of such corporations;

21           59. Thus, one of the express constitutional powers of the Arizona Corporation  
22 Commission is the setting of rates and charges to be made and collected by APS.

23           60. Additional express constitutional powers of the Arizona Corporation  
24 Commission include the making of reasonable rules, regulations and orders by which APS  
25 shall be governed in the transaction of its Arizona business, and the making and enforcement  
26 of reasonable rules, regulations and orders for the convenience, comfort, safety and health of  
27 the customers of APS. *See Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-812 (1992) (citing  
28 Deborah Scott Engelby, Comment, *The Corporation Commission: Preserving its Independence*, 20

1 Ariz.St.L.J. 241, 244-48 (1988); *Records of the Arizona Constitutional Convention of 1910*, at 967-81  
2 (John S. Goff ed., 1991)).

3 61. The Arizona framers also clothed the Commissioners with full power to  
4 investigate, hear and determine disputes and controversies between public utility companies  
5 and the general public, and established constitutional expectations that the Commissioners  
6 would behave as trained, capable and conscientious commissioners, act reasonably in light of  
7 the facts and issues presented to them, and be unbiased, objective and accountable to the voters  
8 who elect them and the consumers they primarily serve, with no member subject to corporate  
9 influences that might alter them from a pure focus on ascertaining the truth and facts of a  
10 matter within their jurisdiction. *See, e.g., Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at  
11 305-306, 138 P. 785-786.

12 62. To carry out their constitutionally delegated powers, the Arizona Constitution  
13 expressly vests each Commissioner with powers to inspect and investigate properties, books,  
14 papers, businesses, methods, and affairs of any public service corporation. The Arizona  
15 Constitution states, at Article XV, § 4:

16 The corporation commission, *and the several members thereof*, shall have  
17 power to inspect and investigate the property, books, papers, business,  
18 methods, and affairs of any corporation whose stock shall be offered for  
19 sale to the public and of any public service corporation doing business  
20 within the state, and for the purpose of the commission, *and of the several*  
21 *members thereof*, shall have the power of a court of general jurisdiction to  
enforce the attendance of witnesses and the production of evidence by  
subpoena, attachment, and punishment, which said power shall extend  
throughout the state. Said commission shall have power to take testimony  
under commission or deposition either within or without the state.

22 (Emphasis added).

23 63. The Arizona statutes expressly acknowledge Commissioner Burns' authority to  
24 conduct inspections of the accounts, books, papers and documents of any public service  
25 corporation, and to examine under oath any officer, agent or employee of such corporations in  
26 relation to the business and affairs of the corporation. A.R.S. § 40-421(A).



1 countermeasures for such influence – the press, public comment, and exposure and debate in  
2 campaign efforts, Commissioner communications with the public, and in connection with  
3 proceedings before the Commission can be nullified. Undisclosed influence over  
4 Commissioners, Commission candidates, or Commission staff undermines the constitutional  
5 objectives and purposes of the Arizona Corporation Commission and denies the citizens of  
6 Arizona the protections and government services they created.

7 69. Arizona’s constitutional history encourages new answers to problems, and the  
8 very structure and purpose of the Arizona Corporation Commission represented a bold,  
9 innovative solution to issues of corruption, legislative and judicial intransigence, and consumer  
10 exclusion that had plagued traditional governmental forms. Yet, the financial resources of  
11 today’s regulated monopolies and other interested corporate players can exploit vast, new  
12 loopholes that undermine the objectivity, independence, transparency and consumer focus  
13 constitutionally expected of Arizona Corporation Commission Commissioners and the  
14 Commission’s staff.

15 70. The spirit of innovation and improvement that motivated the creation of  
16 Arizona’s fourth branch of government justifies the Commissioners maintaining constant  
17 vigilance against threats of the exercise of undisclosed influence by regulated monopoly  
18 utilities or others interested in the outcome of Commission business, and further justifies their  
19 careful and educated consideration of all available alternatives to guard the objectivity and  
20 independence that Arizona’s constitutional framers expected, and that its current citizens  
21 deserve.

22 71. Longstanding legal standards and the political and economic policy sentiments  
23 embedded in Arizona’s Constitution support robust transparency and disclosure (“T&D”)  
24 measures to ensure properly informed decision-making by regulators, consumers, intervenors,  
25 competitors, stakeholders, and even regulated corporate executives, boards, shareholders and  
26 investors.

27 72. Given its unique position as a fourth branch of state government with designated  
28 executive, legislative and judicial powers, there are certain responsibilities and authorities and

1 operations of the Arizona Corporation Commission and its individual Commissioners that are  
2 exclusive to the Commission and the office held by Commissioner Burns. As such, judicial  
3 intervention in such matters is barred by doctrines of separation of powers and concerning  
4 non-justiciable political questions established by the Constitution and law of the State of  
5 Arizona. One of those areas is the selection of what types or terms of T&D rules and  
6 regulations are best suited for or most appropriate in the case of Arizona's regulated  
7 monopolies like APS.

8 73. As noted above, transparency, objectivity, and accountability to Arizona's utility  
9 consumers and an absence of influence by corporations affected by their decisions are  
10 hallmark expectations for the Arizona Corporation Commission's Commissioners under the  
11 Arizona Constitution and law. Such transparency and objectivity is especially appropriate,  
12 necessary and demanded in the case of regulated monopolies like APS and their affiliate  
13 corporations like Pinnacle West because customers of the regulated monopoly do not have any  
14 choice in selecting their general electric service provider. Determining and implementing the  
15 proper policies, practices, rules, standards and procedures to ensure the Commission and its  
16 Commissioners meet these constitutional standards is an exclusive constitutional responsibility  
17 and authority of the Commissioners.

18 74. Thus, one of the areas in which Commissioner Burns' elected office is granted  
19 authorities under the Constitution and laws of the State of Arizona, including Ariz.Const., art.  
20 XV, is the investigation of operations and financial dealings and arrangement of regulated  
21 monopoly utilities and their affiliated companies and organizations that may create  
22 opportunities for direct or indirect financial or political influence over Commissioners,  
23 candidates for Commissioner seats, Arizona Corporation Commission staff, or the family or  
24 close associates of any such persons.

25 75. Another related area of authority delegated to Commissioner Burns under the  
26 Constitution and laws of the State of Arizona, including Ariz.Const., art. XV, is the study,  
27 determination, structuring and proposal of policies, practices, rules and procedures regarding  
28 transparency and disclosure of financial contributions, expenditures, or benefits to be followed

1 by the Commission and its staff, Commissioners, candidates for Commissioner seats, regulated  
2 monopoly utilities and their affiliated organizations or companies, and intervenors in  
3 Commission proceedings.

4 76. Commissioner Burns is entitled to invoke and utilize his individual authorities as  
5 a Commissioner, including those recognized under Ariz.Const. art. XV, § 4 and A.R.S. § 40-  
6 421(A), to conduct an inspection and investigation into the property, books, papers, records,  
7 business, methods and affairs of the Defendant corporations to address transparency and  
8 disclosure issues and to help identify and develop the scope and terms of transparency and  
9 disclosure rules for regulated monopoly utilities and their affiliated entities, as well as  
10 intervenors and other stakeholders in Arizona Corporation Commission proceedings.

11 **The Commissioner's Interests in Addressing Service Rates, Financial Strength and**  
12 **Stability of Regulated Monopolies and Protections for Public Health and Safety**

13 77. In addition to his individual authority as a Commissioner to conduct  
14 investigations and inspections concerning the business and affairs of any public service  
15 corporation and its affiliates for purposes of identifying T&D issues and developing T&D  
16 rules, Commissioner Burns has delegated powers pursuant to the Constitution and laws of the  
17 State of Arizona, including without limitation Ariz.Const., art. XV and A.R.S. § 40-241, to  
18 require reporting and conduct inspections of records of any public service corporation,  
19 including APS, and its affiliates, including Pinnacle West, in connection with ratemaking  
20 issues and proceedings.

21 78. For instance, Commissioner Burns has specifically delegated powers pursuant to  
22 the Constitution and laws of the State of Arizona, including Ariz.Const., art. XV, § 3 to initiate  
23 and participate in proceedings, including investigations and studies, addressing ratemaking for  
24 Arizona's monopoly utilities, including APS.

25 79. The Supreme Court of the State of Arizona has already held that: "the  
26 Commission's regulatory power permits it to require information regarding, *and* approval of,  
27 all transactions between a public service corporation and its affiliates that may significantly  
28 affect economic stability and thus impact the rates charged by a public service corporation."

1 *Woods*, 171 Ariz. at 295, 830 P.2d at 816. Thus, the Commission and its members have  
2 express powers to investigate relationships between APS and its affiliates, including Pinnacle  
3 West, that could affect the economic stability of APS.

4 80. There exist substantial reasons to believe that the contribution or payments by  
5 Pinnacle West or APS of funds to support election campaigns or to fund or support charitable  
6 organizations, groups, or activities or events with which a Commissioner, a Commission  
7 candidate, or a key Commission staff member, or their family or close associates, may be  
8 involved or interested creates material risks of economic instability.

9 81. By way of example, Pinnacle West has reported in its 2016 SEC Form 10-K, the  
10 following:

11 Pinnacle West has received grand jury subpoenas issued in connection with an  
12 investigation by the office of the United States Attorney for the District of  
13 Arizona. The subpoenas seek information principally pertaining to the 2014  
14 statewide general election races in Arizona for Secretary of State and for positions  
15 on the ACC. The subpoenas request records involving certain Pinnacle West  
16 officers and employees, including the Company's Chief Executive Officer  
17 [Defendant Brandt], as well as communications between Pinnacle West personnel  
18 and a former ACC Commissioner. Pinnacle West is cooperating fully with the  
19 United States Attorney's office in this matter.

20 To the extent that contributions by Pinnacle West or APS to, or in relation with, any statewide  
21 elections, particularly for Arizona Corporation Commission seats, implicates criminal  
22 wrongdoing, or even pulls APS and Pinnacle West's chief executive into a criminal  
23 investigation, such activity threatens to severely disrupt operations at APS. Such disruptions  
24 can include the devotion of substantial executive time, worry and resources defending against  
25 a criminal investigation, or the disruptions that would obviously occur in management should  
26 such investigation result in criminal prosecution, and especially conviction, of any shared APS  
27 or Pinnacle West executives.

28 82. Similar risks to corporate operations and economic stability are posed should  
other improper or even questionable contributions by or for APS come to light, such as  
charitable or event promotion contributions that are used to curry or leverage political favors  
and lobbying, or that are used to directly or indirectly influence the actions of a Commissioner



1 or key staff member. The public backlash, harm to employee morale, loss of key personnel,  
2 reallocation of resources to defensive measures, and any associated criminal or civil  
3 prosecution related to such activities could materially impact the operations and stability of  
4 Pinnacle West and APS.

5 83. Threats or risks of disruption of executive management, diversion of material  
6 economic resources, and criminal or civil investigation and/or prosecution of APS, Pinnacle  
7 West or their executives or agents threaten to undermine the compliance by APS with best  
8 practices and regulatory requirements for public health and safety, and for the health and  
9 safety of APS's own employees and contractors.

10 84. Threats or risks of disruption of executive management, diversion of material  
11 economic resources, and criminal or civil investigation and/or prosecution of APS, Pinnacle  
12 West or their executives or agents further threaten to increase economic pressures and  
13 requirements for APS and Pinnacle West and thereby motivate requests and activities designed  
14 to increase APS service rates and thereby increase costs of service to Arizona consumers.

15 85. As noted in allegations set forth above, there exist substantial reasons to believe  
16 the contributions or payments by Pinnacle West or APS of funds to support lobbying or  
17 marketing campaigns designed to target, leverage or influence Commissioners, Commission  
18 candidates or key Commission staff increase the overall expenses of operations for APS and  
19 Pinnacle West, threaten to negatively impact executive compensation and publicly reported  
20 economic performance of APS and Pinnacle West, eliminate incentives and financial abilities  
21 to decrease or curb rate-driving dynamics, and create risks that APS will push for expense  
22 calculations or other income figures during rate setting proceedings that inflict unnecessary  
23 costs on their customers.

24 86. As noted in allegations set forth above, there also exist substantial reasons for  
25 concern that contributions or payments by Pinnacle West or APS of funds to support lobbying  
26 or marketing campaigns, political campaigns or activities designed to target, leverage or  
27 influence Commissioners, Commission candidates, key Commission staff or other  
28 governmental officials create material risks that the Commission will, through the rate-setting

1 process, may impose compelled speech on APS consumers in violation of their constitutional  
2 rights.

3 87. Consequently, issues related to the use of funds by APS and/or Pinnacle West to  
4 create influence over, or to leverage the lobbying of, Commissioners, Commission candidates,  
5 or key Commission staff are fundamentally tied to multiple matters within the exclusive  
6 authority and legitimate constitutional and statutory concerns of the Commission and its  
7 Commissioners.

8 88. Commissioner Burns is delegated powers pursuant to the Constitution and laws  
9 of the State of Arizona, including Ariz.Const., art. XV and A.R.S. § 40-241, to order and to  
10 inspect the accounts, books, papers and documents of a public service corporation or its  
11 affiliates, which in this case include APS and Pinnacle West, in connection with ratemaking  
12 proceedings. Commissioner Burns is also delegated powers pursuant to the Constitution and  
13 laws of the State of Arizona, including Ariz.Const., art. XV and A.R.S. § 40-241, to order the  
14 appearance and take the testimony of officers of public service corporations, including APS, in  
15 relation to the public service corporation's business and affairs.

16 89. Given the allegations set forth above, the inspections, testimony and  
17 investigations Commissioner Burns is authorized to initiate and compel necessarily include  
18 obtaining records, evidence and testimony related to the types of contributions and payments  
19 by APS and Pinnacle West discussed above.

20 90. Commissioner Burns' rights and authorities as set forth in this Complaint are  
21 individual rights and authorities and do not require the cooperation, acquiescence, compliance  
22 or authorization of any other Commissioners or the Commission as a whole. The other  
23 Commissioners have no legal authority to stop or limit the investigation, inspection of records  
24 and taking of testimony initiated by Commissioner Burns on such topics.

#### 25 **Commissioner Burns' Subpoenas to the APS Parties**

26 91. On August 25, 2016, Commissioner Burns issued two subpoenas in accordance  
27 with his constitutional and statutory authorities. The first was to Defendant APS and  
28 Defendant Brandt in his capacity as Chairman, President and Chief Executive Officer of APS

1 and/or Pinnacle West, and the second was to Pinnacle West and Defendant Brandt in his  
2 capacity as Chairman, President and Chief Executive Officer of APS and/or Pinnacle West. A  
3 true and correct copy of the subpoenas is attached to this Complaint as Exhibit 1.

4 92. The subpoenas sought production of documents, answers to written questions,  
5 and to compel testimony by Defendant Brandt and others with relevant knowledge concerning  
6 the subjects listed within the subpoenas.

7 93. Commissioner Burns originally filed the subpoenas in an administrative  
8 ratemaking docket for APS at the Corporation Commission.

9 94. The subpoenas issued by Commissioner Burns to APS and Pinnacle West and  
10 Mr. Brandt were and remain appropriate and lawful and authorized as part of the ratemaking  
11 process pending before the Commission involving APS. Commissioner Burns was not  
12 required to obtain or maintain authorization for such subpoenas from any other Commissioner  
13 or the Commission as a whole.

14 95. APS and Pinnacle West have no legal rights to object to or to refuse to comply  
15 with the subpoenas that are the subject of this action.

16 96. Yet, APS only partly complied with the subpoenas, and the Defendants have  
17 refused to comply with the remainder of the subpoenas. They have also refused and will  
18 continue to refuse to make Defendant Brandt or any other witness available to testify as  
19 commanded by the subpoenas.

20 97. Instead, APS and Pinnacle West filed an earlier special action and declaratory  
21 judgment proceeding in this Court seeking relief stopping Commissioner Burns from  
22 enforcing the subpoenas against them and Defendant Brandt. That action was assigned case  
23 number CV2016-014895.

24 98. In that action, APS and Pinnacle West challenged Commissioner Burns'  
25 authority as an individual Commissioner to issue the subpoenas, and challenged the subpoenas  
26 as a violation of APS's and Pinnacle West's First Amendment rights under the United States  
27 Constitution. Those challenges were never decided, and on March 8, 2017, APS and Pinnacle  
28 West voluntarily withdrew that action.

1           99.     Since the filing of the earlier action, Commissioner Burns has continued his  
2 investigation into expenditures, or potential expenditure activities, by Arizona Corporation  
3 Commission-regulated entities, intervenors or other interested parties that may create  
4 opportunities for influence over individual Commissioners or key Commission staff, including  
5 those expenditures that may allow a regulated entity like APS and its parent organization to  
6 directly or indirectly influence action or votes by support of campaign activities, charitable or  
7 other civic functions, or deceptive lobbying practices.

8           100.    On February 7, 2017, Commissioner Burns filed and initiated a new  
9 administrative proceeding, identified with Docket No. RU-00000A-17-0035 (the "New  
10 Docket") before the Arizona Corporation Commission. The processing is aimed at  
11 investigation into the facts surrounding opportunities for undisclosed influence of  
12 Commissioners, Commission candidates or Commission staff through financial expenditures  
13 or benefits made or extended by regulated monopoly utilities, intervenors in Commission  
14 proceedings, and other stakeholders in Commission business and development of appropriate  
15 new transparency and disclosure policies and/or rules addressing such issues.

16           101.    Commissioner Burns has dually filed the subpoenas that are the subject of this  
17 action in the New Docket and has advised APS and Pinnacle West through correspondence by  
18 his counsel, that he requires full cooperation and compliance by APS, Pinnacle West, and any  
19 deponent required thereby, with the subpoenas in the New Docket. A true and correct copy of  
20 the notice to the corporate Defendants' counsel, along with attachments that display the  
21 materials filed by Commissioner Burns to open the New Docket, are attached hereto as Exhibit  
22 2.

23           102.    Commissioner Burns has issued through various means, including messages  
24 communicated through the Commission e-Docket and by posting on his webpage at the  
25 Commission, communications inviting input by regulated monopolies, intervenors and other  
26 Commission stakeholders in connection with the subjects addressed in the New Docket, and  
27 has asked for initial submissions to be made by March 3, 2017.  
28

1           103. Commissioner Burns has scheduled a publicly noticed workshop to occur in the  
2 New Docket on March 23, 2017, at which time he intends to discuss information, materials  
3 and comments received in response to the New Docket announcement and call for submission  
4 of comments and information. He also intends at that time to take testimony from relevant  
5 individuals with knowledge, information or expertise concerning the transparency and  
6 disclosure issues that are the subject of the New Docket.

7           104. Commissioner Burns intends to and needs to use the information subpoenaed  
8 from APS and Pinnacle West for, among other appropriate and authorized activities of his  
9 office, the investigation and rule development contemplated by the New Docket.

10           105. The subpoenas issued by Commissioner Burns that are the subject of the APS  
11 Parties' claims were and remain appropriate and lawful and authorized as part of the  
12 proceedings in the New Docket. Commissioner Burns was not required to obtain or maintain  
13 authorization for such subpoenas from any other Commissioner or the Commission as a whole  
14 to file and enforce them in connection with the New Docket.

15           106. The Defendants have no legal right to object to or refuse to comply fully and  
16 timely with the subpoenas in connection with the New Docket proceedings. Their refusal to  
17 do so will materially and adversely impact Commissioner Burns' ability to carry out his lawful  
18 and constitutionally authorized responsibilities in connection with the New Docket issues and  
19 all other issues identified above.

20           107. On or about March 6, 2017, Commissioner Boyd Dunn issued a letter to  
21 Commissioner Burns and the other Commissioners concerning proceedings in the New Docket  
22 in which he contended that "I believe we should exercise restraint and acknowledge that the  
23 pending lawsuit [by APS and Pinnacle West] is the proper place to resolve the legitimacy of  
24 the subpoena [sic] and the scope of the Commission's authority to require disclosure of  
25 Contributions under Arizona law." A true and correct copy of Commissioner Dunn's letter is  
26 attached hereto as Exhibit 3.

27           108. While Commissioner Burns disagrees with Commissioner Dunn's belief that the  
28 Commissioners should not proceed with the New Docket matters at this time, and

1 Commissioner Dunn's position is moot given the voluntary and surprising withdrawal by APS  
2 and Pinnacle West of their lawsuit in this Court, the letter provides a second Commissioner's  
3 opinion indicating that Commissioner Burns is entitled to have questions concerning his  
4 authority to issue and enforce the subpoenas and the Defendants' authority to refuse to fully  
5 comply with the subpoenas decided by a declaration from the Arizona courts.

#### 6 **CLAIM FOR DECLARATORY RELIEF**

##### 7 **The Commissioner is Entitled to a Declaratory Judgment**

8 109. The Defendants have indicated through counsel for APS and Pinnacle West that  
9 they intend to preserve their objections to and refuse to comply with portions of the subpoenas  
10 they previously objected to. A true and correct copy of a letter from such counsel on that point  
11 is attached here as Exhibit 4.

12 110. Thus, Commissioner Burns and the Defendants are at an impasse regarding the  
13 Defendants' obligations to timely and full comply with the subpoenas and Commissioner  
14 Burns' rights and authority to demand such compliance.

15 111. The portions of the subpoenas that the Defendants refuse to comply with seek  
16 information, records and testimony that relate to the ratemaking, corporate stability, corporate  
17 wrongdoing, health and safety, compelled speech and improper influence issues over which  
18 the Commission is authorized and responsible to regulate and for which each individual  
19 Commissioner is entitled to conduct an investigation, including examinations of the books,  
20 records and agents of the regulated monopoly, APS, and its affiliate, Pinnacle West.

21 112. Without the Court's confirmation that Commissioner Burns is fully authorized to  
22 issue and demand full and timely compliance with the subpoenas by APS and Pinnacle West,  
23 Commissioner Burns' legal rights and authorities will be denied and the rights of Arizona  
24 citizens to the operation of their Corporation Commission in accordance with its constitutional  
25 and statutory powers shall be unlawfully impaired.

26 113. The respective rights of a key elected state official and of a regulated monopoly  
27 and its affiliates and executives are therefore in dispute and need to be resolved.  
28

1           114. Commissioner Burns is therefore entitled, pursuant to the terms of the Arizona  
2 Uniform Declaratory Judgments Act, A.R.S. § 12-1831, *et seq.*, to a full and final declaration  
3 that he is fully authorized and entitled to demand from the Defendants, individually and  
4 collectively, the full and timely compliance with the subpoenas that are the subject of this  
5 action, and that he is not required to obtain consent, approval, or authority from any of the  
6 other Commissioners to enforce the subpoenas.

7           115. The rights of Commissioner Burns to have the subpoenas fully and timely  
8 complied with by the Defendants are a matter of grave statewide importance of a constitutional  
9 dimension. Should any of the Defendants indicate in the course of these proceedings that they  
10 intend not to fully and timely comply with the subpoenas according to the declaration of this  
11 Court, Commissioner Burns is entitled, per the terms of A.R.S. § 12-1838, as otherwise  
12 provided by Arizona law, and as necessary for the Court to protect and enforce its jurisdiction,  
13 to further relief including any appropriate injunctive orders, contempt rulings or sanctions  
14 necessary to compel compliance with the declaration of this Court and the terms of the  
15 subpoenas.

16           116. WHEREFORE, Commissioner Burns is entitled to entry of a final judgment in  
17 favor of Commissioner Burns and against the APS Parties, on the following terms:


- 18           A. Entering a final declaratory judgment confirming that Commissioner Burns is  
19 fully authorized and entitled to demand from the APS Parties, individually and  
20 collectively, full and timely compliance with the subpoenas that are the subject  
21 of this action, and that he is not required to obtain consent, approval, or authority  
22 from any of the other Commissioners to enforce the subpoenas;
- 23           B. Entering whatever injunctive or other relief, including contempt or sanction  
24 orders, against the APS Parties compelling their full and timely compliance with  
25 the subpoenas may become necessary to enforce the final declaration of the  
26 Court;
- 27           C. Awarding Commissioner Burns, if and to the extent authorized by law, his  
28 attorneys' fees and costs; and

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D. Awarding Commissioner Burns all such other relief, at law or in equity, that the Court deems just and proper.

DATED this 9th day of March, 2017.

BASKIN RICHARDS PLC



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