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BEFORE THE ARIZONACORPORATION (DOCKET CONTROL

2 COMMISSIONERS

TOM FORESE - CHAIRMAN

ROBERT BURNS

DOUG LITTLE

ANDY TOBIN

BOYD DUNN

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BASKIN RICHARDS PLC 11 N. Central Avenue, Suite 1150 Phoenix, Arizona 85012 Telephone 602-812-7979 Facsimile 602-595-7800 15

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IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE TH EFAIR 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.

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

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

EMERGENCY MOTION OF COMMISSIONER ROBERT BURNS TO COMPEL COMPLIANCE WITH INVESTIGATORY SUBPOENAS

(EXPEDITED RULING AND SUSPENSION AND CONTINUANCE OF RATE CASE PROCCEEDINGS REQUESTED)

Arizona Corporation Commission

DOCKETED

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Pursuant to an Under Advisement Ruling ("Ruling") of the Superior Court of the State of Arizona, In and For the County of Maricopa, dated May 30, 2017, in Case No. CV2017-001831 (the "Superior Court Case"), Commissioner Robert Burns moves the Commissioners to immediately issue two orders:

- 1. An order confirming that Commissioner Burns has individual authority to issue and enforce the two subpoenas issued by Commissioner Burns on August 25, 2016 (the "Subpoenas") (copies at Exhibit "A" hereto), that the remaining Commissioners will not act upon the objections against the Subpoenas filed with the Commission by or on behalf of Arizona Public Service Company ("APS"), Pinnacle Weşt Capital Corporation ("Pinnacle West"), and Donald Brandt, the Chief Executive Officer of APS and Pinnacle West (hereafter, collectively, the "Respondents"), and that unless Respondents obtain a court order limiting the Subpoenas, the Subpoenas are subject to immediate enforcement by Commissioner Burns without interference by the other Commissioners.
- 2. An order directing the Administrative Law Judge in this APS rate case to promptly decide the two motions Commissioner Burns filed in this case on April 26 and 27, 2017 (the "Rate Case Motions")¹, before any other actions are taken in this rate case.

It is time that Arizona's largest monopoly utility and its parent be fully open with its regulators and the 1.2 million of Arizonans it seeks to saddle with ever-increasing service charges. And it is time for any Commissioners who might be suspected of being influenced by massive election spending from APS and Pinnacle West to step aside and stop shielding these

- A. The Emergency Motion of Commissioner Robert Burns for Relief (1) Confirming that the Administrative Law Judge Will Facilitate Calling and Questioning of Hearing Witnesses; and (2) Approval of his Counsel Participating in Questioning (Expedited Ruling and Suspension and Continuance of Hearing Requested) (filed April 26, 2017); and
- B. Commissioner Burns' Motion for Determination of Disqualification and for Stay of Proceedings Pending Full Investigation (Expedited Ruling Requested) (filed April 27, 2017).

¹ The Rate Case Motions are:

BASKIN RICHARDS PLC 2901 N. Central Avenue, Suite 1150 Phoenix, Arizona 85012 1

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companies. The Arizona Corporation Commission's ("Commission") role is to regulate monopolies and to protect the public, not to assist the monopolies through action or omission in avoiding thorough disclosure to the Commission.

APS, a monopoly regulated by the Commission, and Pinnacle West, which is APS' parent company, are widely suspected of having spent significantly in both "dark money" and open campaigns to capture the allegiance of a majority of the current Commissioners. Despite Respondents' ongoing, aggressive campaign to keep the most relevant information secret, the known facts are troubling. Furthermore, as confirmed by an Opinion of the State's highest legal officer, the Arizona Attorney General, Commissioner Burns' has individual authority to issue and pursue additional relevant information about APS and Pinnacle West. [See Exhibit "J" hereto]. Given these unique circumstances, the continuing reluctance of APS, Pinnacle West, and other Commissioners to allow the curtains to be drawn on any back-room dealings, influence peddling strategies, and interactions with Commissioners and their surrogates, compounds suspicions and creates the appearance of impropriety. Further, the recent indictment on corruption charges of a former Commissioner and a political operative who may also be closely linked to APS only sharpens justification for both the information sought in the Subpoenas and the investigation into disqualification Commission Burns has requested. As set forth below, there is no legal justification for the Commissions' further obstruction to Commissioner Burns obtaining the information, testimony, and documents requested. If the facts will exonerate and support APS and Pinnacle West, those companies and the other Commissioners should welcome it. If the facts instead suggest something else, conscientious Commissioners, whose position is intended to serve utility consumers first, should allow Commissioner Burns to immediately pursue the truth.

This motion is made personally by Commissioner Burns, and through his designated counsel², to ensure compliance with the Order of the Superior Court and to overcome all

² Commissioner Dunn's comment at footnote 2 of his letter filed in this docket on May 30, 2017 that the Commissioners cannot consider motions filed by Commissioner Burns in this case because they were filed "by an attorney that has not been admitted to appear in the rate case on behalf of Commissioner Burns" is incorrect. The law firm representing Commissioner

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27 28 objections filed by APS, Pinnacle West and CEO Brandt in the Superior Court Case as justification for their recent Motion to Dismiss, including that doctrines of primary jurisdiction and exhaustion of administrative remedies preclude the Superior Court from considering Commissioner Burns' claims. Commissioner Burns hereby preserves his objections to having to file a motion to compel³, and preserves the concerns and issues he has raised in the APS rate

Burns was retained by a formal written engagement agreement with the Commission that implemented the formal approval of the Commissioners to hire private counsel for Commissioner Burns. The engagement expressly included retention for matters, issues, claims and actions relating to or arising in connection with inquiries into Arizona Public Service Company or Pinnacle West Corporation, including the Subpoenas issued on or about August 25, 2016 by Commissioner Burns, and it specifically authorized services in connection with proceedings before the Arizona Corporation Commission concerning the Subpoenas. The firm also filed matters in this case and in Commission Docket No. E-01345A-16-0123 (the "T&D Docket") prior to the Commissioners' vote on March 14, 2017 to stop the Commission from paying for further counsel services for Commissioner Burns. Therefore, the firm's retention and engagement as Commissioner Burns' counsel and representative for proceedings in this case was expressly authorized by the Commission long before Commissioner Burns filed his recent motions in this docket. Moreover, there are no rules requiring a Commissioner to have his or her attorney "admitted" to appear in a rate case, nor could the Commission regulate attorney admission in that way as the question of representation by counsel is a matter of due process and regulated per Rule 31(a)-(d), Rules of the Supreme Court of the State of Arizona. To ensure that no argument about "admission" of counsel, regardless of its lack of merit, remains an excuse to further delay or avoid resolution of the critical issues raised hereby, Commissioner Burns has separately executed this Motion as his own direct motion to the Commission, and also hereby confirms that the law firm of Baskin Richards PLC is his personally designated representative for filings in this matter and has been fully authorized to make all filings previously made in this case and the T&D Docket and to make all further necessary filings in Commission dockets as his agent and counsel. The Commissioners are therefore on notice that all filings made on behalf of Commissioner Burns in this docket and the T&D Docket by the law firm of Baskin Richards PLC are the motions and/or filings of Commissioner Burns personally and are entitled to consideration as such. Furthermore, though no further application for admission is required for counsel for a Commissioner, Commissioner Burns hereby requests and expects as a matter of professional comity that his fellow Commissioners will acknowledge his ongoing appointment of counsel as his representative and accord his attorneys the respect and standing accorded counsel for other participants in this matter, treating all filings made by such counsel as the filings of Commissioner Burns personally.

³ Commissioner Burns specifically preserves his positions that he has individual authority to issue and enforce the Subpoenas, that the Commission does not have primary jurisdiction in connection with the relief claim he has filed in the Superior Court Case, that he does not have

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case about the need to investigate the disqualification of other Commissioners in all matters involving APS or Pinnacle West. Commissioner Burns respectfully submits that good cause exists to expedite consideration of this motion, as explained more fully below, and asks that a public meeting be scheduled within the next week to address this motion fully. And, as stated more explicitly in the accompanying Emergency Renewed Motion of Commissioner Robert Burns for Relief Staying These Rate-Making Proceedings ("Motion to Stay"), Commissioner Burns requests that the rate case be suspended until such time as the disqualification investigation is complete and the public has assurance that the Commission's decisions, upon which the public relies for their protection, are not improperly compromised.

I. The Respondents Refuse to Comply Fully with the Subpoenas.

The Respondents refuse to fully comply with the Subpoenas. The Commissioners need look no further than the Motion to Quash Or, In the Alternative, To Decline to Hear filed by APS and Pinnacle West in this case on September 9, 2016 (the "First Motion to Quash"), and their Renewed Motion to Quash filed in this case on March 10, 2017 (the "Second Motion to Quash"), to confirm that the Respondents object to and have refused to respond to large categories of information demanded by the Subpoenas. Respondents have repeated similar objections in APS's Objection to Commissioner Burns' Demand for Testimony filed in this case on April 26, 2017, and in the filings they made (then withdrew) in Maricopa County Superior Court Case No. CV2016-014895. [See Exhibits "B" and "C" hereto (APS/Pinnacle West Superior Court filings without exhibits)⁴]. For example, Respondents challenge Commissioner Burns' authority to individually issue and pursue the investigatory Subpoenas, mistakenly claiming that other Commissioners have authority to quash the Subpoenas of an

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to obtain the permission or approval of the other Commissioners for the issuance and enforcement of the Subpoenas, and that he does not have to exhaust administrative remedies or seek relief by a motion to compel compliance with the Subpoenas before he is entitled to judicial consideration of his claim for declaratory relief in the Superior Court Case.

Commissioner Burns incorporates the arguments APS and Pinnacle West made against the Subpoenas in their prior court filings as indicative of the erroneous bases they use as excuses for not responding.

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issuing Commissioner. [See Second Motion to Quash, at 29 – 33]. Based on these misguided presumptions, Respondents are refusing to produce information pertinent to this matter, including information and records about: 1) expenditures or budgeting decisions of APS and Pinnacle West in the areas of elections, political influence efforts, lobbying or marketing, and charitable contributions designed to gain influence with political officials ("Political Influence Efforts"); 2) APS/Pinnacle West's overlapping financial structures; 3) Pinnacle West's financial operations, plans and objectives in connection with Political Influence Efforts and the manner in which they impact APS's rate requests. Respondents contend that information about Pinnacle West is not relevant to any rate issues, (See, e.g., First Motion to Quash, at 11-13; Second Motion to Quash, at 14-17), that First Amendment interests make the subpoenas unlawful and unenforceable, [see, e.g., First Motion to Quash, at 15-18; Second Motion to Quash, at 21-22], and that the Subpoenas are unenforceable because they are merely issued to harass Respondents, improperly seek to depose APS's CEO rather than letting APS select who gets to testify, and because Commissioner Burns has threatened to make the information supplied public [see First Motion to Quash, at 22-24; Second Motion to Quash, at 27-28]. Respondents' objections are subterfuge; the information sought is directly relevant to APS' current requested rate increase, as well as many other issues at the heart of the Commission's jurisdiction.

- The Commissioners Cannot Interfere with Commissioner Burns' Subpoenas II. Because He Has An Individual Right to Issue and Enforce Them.
 - A. The Subpoenas Seek Information Relevant to Pending Proceedings Within the Authority of the Commission.

Arizona Constitution and Commission enabling statutes provide Commissioners very broad powers to conduct investigations related to regulated monopoly utilities and to inspect the books and records of both the utility and their affiliated companies, like Pinnacle West. See, e.g. Ariz. Const., art. XV, §§ 3-4; A.R.S. § 40-241 ("each commissioner" may conduct inspections of corporate books or examinations under oath of corporate officials); Ariz. Corp. Comm'n v. Ariz. ex rel. Woods, 171 Ariz. 286, 290-291 (1992) ("Woods").

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[C]ourts give the Commission "wide berth" when they review the validity of Commission investigations. [citation omitted]. In fact, "an appropriately empowered agency 'can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." [citations omitted]. In other words, "the Commission must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the Commission's regulatory authority." SEC v. Brigadoon Scotch Distrib. Co., 480 F.2d 1047, 1052-53 (2nd Cir. 1973). See also EEOC v. Kloster Cruise Ltd., 939 F.2d 920, 922 (11th Cir. 1991) (court must enforce subpoena if agency makes plausible assertion of jurisdiction and information sought is not plainly incompetent or irrelevant to any lawful purpose of the agency).

Carrington v. Ariz. Corp. Comm'n, 199 Ariz. 303, 305 (App. 2000). These broad investigatory powers are intended to counter the undue influence large corporations had wielded against consumer interests in traditional legislative and judicial arrangements, and to provide a uniquely protective form of governmental powers "primarily for the interest of the consumer." State v. Tucson Gas, Elec. Light & Power Co., 15 Ariz. 294, 308 (1914) see also Woods, 171 Ariz. at 291, 830 P.2d at 811; John D. Leshy, The Making of the Arizona Constitution, 20 Ariz.St.L.J. 1, 88 (1988). And the constant exposure to such deep scrutiny is the price APS and Pinnacle West pay for the special economic benefits of operating a state-sanctioned monopoly. Woods, 171 Ariz. at 290; Davis v. Corp. Comm'n, 96 Ariz. 215, 218 (1964) ("The monopoly is tolerated only because it is to be subject to vigilant and continuous regulation by the Corporation Commission,...") Thus, an investigation concerning APS and Pinnacle West is appropriate, and is constitutionally and statutorily authorized, even when a Commissioner acts on mere suspicion of evidence that will help the Commissioner determine if particular activities of the companies come within the Commission's broad authorities or not.

There is no question that Commissioner Burns' demands for information about how Pinnacle West and APS have spent money obtained from ratepayers to fund election and political support activities, lobbying, marketing, charitable contributions, and other political influence peddling activities far exceed this low threshold. Undoubtedly, the Commission, and an individual Commissioner such as Commissioner Burns, has authority (and even a constitutional obligation) to investigate and take action to prevent even the appearance of

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undue influence of Commissioners by regulated entities and their affiliates, and to pursue disqualification of Commissioners whose impartiality might reasonably be questioned under constitutional due process standards. See Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868 (2009). [See also Commissioner Burns' Motion for Determination of Disqualification and for Stay of Proceedings Pending Full Investigation (Expedited Ruling Requested) (filed April 27, 2017), at 17-21]. Commissioner Forese has just called for a reexamination of past Commission actions in light of the indictment of a past Commissioner. He has directed Commissioner Tobin to initiate such efforts, confirming their mutual understanding that selfpolicing questions about undue influence by regulated entities and their affiliates is a matter central to the Commissioners' authorized functions. It would be hypocritical and suspicious for the Chairman to call for such a sweeping investigation of actions involving a prior Commissioner and yet balk at Commissioner Burns' investigation into the Chairman's and other Commissioners' relationships to APS and Pinnacle West.⁵

Moreover, the information sought is central to the Commission's rate-setting authorities. It will confirm the transfer of utility customer revenues funding between APS and its parent, and just how Pinnacle West relies upon and uses them for political influence activities, and will provide evidence critical to determining the manner and extent to which APS's rate requests and rate settlement strategies and decisions, including calculations and settlement decision-making for the pending request increase, are impacted and influenced by Pinnacle West's political and other influence-peddling spending and objectives.⁶ Before this

⁵ As the Commissioners are likely aware, Pinnacle West has even publicly reported receiving federal grand jury subpoenas seeking "information principally pertaining to the 2014 statewide general election races in Arizona for Secretary of State and for positions on the ACC," including "records involving certain Pinnacle West officers and employees, including the Company's Chief Executive Officer [Defendant Brandt], as well as communications between Pinnacle West personnel and a former ACC Commissioner." [See Exhibit "D", at 27]. The 2014 election was the election in which Commissioners Forese and Little were elected and about which there has been so much public outcry over the large "dark money" contributions made for and against Commission candidates that year.

⁶ The Commissioners must concede that Arizona Constitution, Art. XV, § 3 makes rate-setting and consideration a central function of the Commissioners.

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Commission, and before the Superior Court, Commissioner Burns detailed evidence confirming that Pinnacle West officials must be heavily involved in APS rate-setting strategy and requests, and that Pinnacle West has spent millions and millions of dollars on the types of political influence activities targeted by Commissioner Burns' subpoenas. [See, e.g., Emergency Motion of Commissioner Robert Burns for Relief (1) Confirming that the Administrative Law Judge Will Facilitate Calling and Questioning of Hearing Witnesses; and (2) Approval of his Counsel Participating in Questioning (Expedited Ruling and Suspension and Continuance of Hearing Requested) (filed April 26, 2017), at Commissioner Burns' Motion for Determination of Disqualification and for Stay of Proceedings Pending Full Investigation (Expedited Ruling Requested) (filed April 27, 2017), at 15-17; Exhibit "E" hereto (contents and arguments incorporated herein by reference), at ¶¶'s 13-24, 31-39; Exhibit "F" hereto, at pp. 4-817. More, Pinnacle West has publicly promised to continue such spending. [See, id.; Exhibits "G" and "H" hereto]. He has also established that Pinnacle West regularly sets targets and projections for shareholders, investors and prospective financing sources for such things as income growth and dividends, meaning Pinnacle West has carefully projected its future expenses for various forms of political influence peddling, what it anticipated earnings from Arizona consumers through its almost exclusive source of funds (APS customer payments), and the difference between the two that will be available to fund net income, corporate growth and shareholder dividends. [See Exhibit "F" hereto, at pp. 5-8]. Alternatively, had Pinnacle West not taken such factors into account, it could be exposed to investor claims for offering knowingly uninformed financial performance projections. See, Marx v. Comput. Scis. Corp., 507 F.2d 485, 490 (9th Cir. 1974) (holding a jury could reasonably find that corporation, "by ignoring facts seriously undermining the accuracy of the forecast, failed to meet the duty imposed by § 10(b) [of the Securities and Exchange Act of 1934 (15 U.S.C. § 78j(b)).

Commissioner Burns incorporates here his arguments and factual assertions made in his Superior Court filings attached here as Exhibits "E" and "F", as well as the information in the exhibits that are attached to those filings in the Superior Court docket, which exhibits are available in that docket for review by the other Commissioners and their staff.

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and rate negotiation strategy in part to ensure funds will be available to meet their influencepeddling budgets and still meet their forward-looking financial forecasts required for
shareholders and investors. It is therefore highly likely that the subpoenaed information and
deposition testimony to follow it will show that what APS is seeking from ratepayers in its rate
of return calculations is based, in part, on funding future influence peddling costs and
objectives at the Pinnacle West level. The Subpoenas seek considerable information directly
relevant to the pending rate issues.

Also, the subpoenaed information has become critical to allow the Commission to

The only logical conclusion, then, is that Pinnacle West and APS set their rate requests

adequately assess the rate issues, because APS and Pinnacle West subsequently and similarly refused to provide the requested information through an alternative method such as the testimony of witnesses with sufficient knowledge for examination in this rate proceeding. As the Commissioners are aware, Commissioner Burns formally requested the Administrative Law Judge ("ALJ") facilitate appearances by numerous senior Pinnacle West and APS officials and even formally filed a list of initial questions for such officials addressing these rate issues. There is no question, Pinnacle West and APS know exactly what information Commissioner Burns requires. Yet, when asked questions eliciting such relevant information, they responded with only a letter from an individual disclaiming knowledge of Pinnacle West's operations and who offered layers of formal objections purportedly excusing its refusal to provide the required information through testimony. [See May 2, 2017 Declaration of Barbara Lockwood (docketed May 4, 2017); Commissioner Burns' Notice of Insufficiency of APS and Pinnacle West Responses to Commissioner Burns' Questions (docketed May 12, 2017) (arguments incorporated by reference herein)]. APS's and Pinnacle West's blanket refusal to provide the requested information through testimony further heightens the need for the Subpoenas and the disclosure they compel.

Finally, under Arizona Constitution, Art. XV, § 3, the Commissioners are authorized to develop rules and regulations governing the practices of regulated public service corporations, including ethics, transparency and disclosure rules. Indeed, Commissioner Burns opened the

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transparency and disclosure docket in E-01345A-16-0123 the ("T&D Docket") and Commissioner Dunn opened an ethics docket under the assignment of Chairman Forese, Docket No. AU-00000E-17-0079. Notably, just this week Commissioner Dunn highlighted the need for ethical guidelines for the Commissioners when he wrote in this docket that Commissioner Burns' Motions "and other concerns regarding commissioner influence, have highlighted the urgent need for a Commission Code of Ethics." [See Letter of Commissioner Dunn dated May 30, 2017]. Commissioner Dunn further stated that he plans "to develop a code for the Commission as soon as possible." [Id.]. Adding this to Commissioner Forese's letter this week affirming his directive to Commissioner Tobin to look into the propriety of Commission policies and actions during the indicted former commissioner's term, it appears that a majority of the current Commissioners agree that consideration of transparency and disclosure matters regarding regulated entities, such as Respondents, is within the Commission's authority. And, given the public outcry against even the possibility of Commissioners being influenced by APS or Pinnacle West campaign spending, and the concerns for due process violations in both the pending rate case and generally, there is no better or more appropriate place than this docket to begin a rapid and thorough investigation into disclosure and disqualification matters as they relate to APS/Pinnacle West expenditures on Commission elections and other attempts by Respondents to gain improper influence over Commissioners or their surrogates. Were Respondents to comply with Commissioner Burns' Subpoenas, they may also supply critical information to assist the efforts initiated by Commissioner Burns and Commissioner Dunn to create appropriate Commissioner and regulated party ethics rules.

The Investigatory Subpoena Right is an Individual Commissioner Power В. with which the Other Commissioners Cannot and Should Not Interfere.

The right to seek the types of relevant information outlined above through inspections of records, investigatory subpoenas, and investigatory depositions is an individual Commissioner right not susceptible to interference by other Commissioners. The Arizona Constitution states, at Article XV, § 4:

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The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several 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.

(emphasis added). The Supreme Court of Arizona has affirmed that this exclusive delegation of broad investigatory powers cannot be decreased by statute. Selective Life Ins. Co. v. Equitable Life Assurance Soc'y, 101 Ariz. 594, 600 (1967). Thus, except to the extent the Commission enabling statutes attempt to implement and broaden the constitutionally-delegated investigation powers, see id. at 600 ("The legislature may enlarge the powers and extend the duties of the corporation commission, but may not decrease its powers."), Article XV, Section 4 is determinative of the investigatory powers of the Commission and its individual Commissioners. In any event, the Arizona statutes are consistent and confirm that the investigatory rights are individual Commissioner rights, not limited to collective, majority actions. See A.R.S. § 40-241 ("each commissioner" may conduct inspections of corporate books or examinations under oath of corporate officials).

Focusing back on the constitutional language, the Commissioners, just like the Arizona courts, cannot ignore that express, plain language delegating authority for investigations, subpoenas and depositions to "[t]he corporation commission" and also separately to "the several members thereof." That is the controlling plain language of the constitutional clause.

The provisions of our constitution are mandatory, Ariz. Const. art. II, § 32, When called upon to interpret a constitutional provision, we first examine the provision's plain language; if that language is unambiguous, we generally must follow the text as written. Jett v. City of Tucson, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994). In such cases, "judicial construction is neither necessary nor proper," and we will not consider any extrinsic matter supporting a construction that would vary the provision's apparent meaning. Id. Only when the constitutional language is ambiguous or its plain meaning would lead to an absurd result may we look behind the bare words of the provision to determine the conditions that gave rise to it and the effect it was intended to have. Am. Bus Lines, Inc. v. Ariz. Corp. Comm'n, 129 Ariz, 595, 598, 633 P.2d 404, 407 (1981).

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Tumacacori Mission Land Dev., Ltd. v. Union Pac. R.R. Co., 228 Ariz. 100, 102 (App. 2011); see also Zamora v. Reinstein, 185 Ariz. 272, 275 (1996) (same); Canon School Dist. No. 50 v. W.E.S. Constr. Co., 177 Ariz. 526, 529 (1994). The courts first consider the specific language of the law "because we expect it to be 'the best and most reliable index of" its meaning. Zamora, 185 Ariz. at 275 854 P.2d at 133 (quoting State v. Williams, 175 Ariz. 98, 100 (1993)).

It is a corollary, longstanding tenet of Arizona law that in interpreting the state constitution, "the cardinal principle is to give full effect to the intent of the lawmaker", Phoenix v. Yates, 69 Ariz. 68, 71 (1949), and that to do so requires that "[e]ach word, phrase, clause, and sentence must be given meaning so that no part will be void, inert, redundant, or trivial." Id. Interpreting Article XV, Section 4 to grant investigatory powers only to the whole Commission rather than to individual Commissioners improperly renders the clause "and the several members thereof" redundant, superfluous, and a nullity.

The Commissioners must also consider punctuation and the use of a conjunctive term in the phrase "and the several members thereof." See, e.g., In re Phila. Newspapers, LLC, 599 F.3d 298, 329 n.15 (3d Cir. 2010) ("The grammatical structure of a statute, including the positioning of commas, should be considered in statutory interpretation, and indeed, it can 'mandate' a particular reading of a statute."). The phrase ", and the several members thereof," in Article XV, § 4 is set off both times it appears by commas and the conjunctive "and" from the phrase "[t]he corporation commission" or "the commission." That grammatical structure mandates that the category described as "and the several members thereof" be read as independent of and in addition to the category referred to as "[t]he corporation commission." See United States v. Ron Pair Enters., 489 U.S. 235, 241, 109 S. Ct. 1026, 1030, 103 L.Ed.2d 290, 298 (1989) (stating that separation of the statutory clause "interest on such claim" by commas and the conjunctive words "and any" from references to fees, costs and charges mandated the courts to interpret "interest on such claim" as a separate category of recoverable monies.)

BASKIN RICHARDS PLC N. Central Avenue, Suite 1150 Phoenix, Arizona 85012

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Therefore, applying the plain language, grammatical structure and punctuation used by the constitutional framers, the Commissioners must conclude that Article XV, § 4 contemplates two distinct alternatives for exercising the investigatory powers described. The Commission may act as a whole and conduct a collective investigation; but, each Commissioner is also delegated the exact same rights to individually employ the broad investigational powers without seeking cooperation or approval from the rest of the Commissioners. And, given that express delegation of individual power, it is implied and necessary that the Commissioners acting collectively cannot limit an individual Commissioner's exercise of his or her investigatory powers. Bound by the Constitution and the Arizona law governing constitutional interpretation, the Commission must acknowledge Commissioner Burns' subpoena rights as individual powers that are not subject to either preapproval by, or interference through, a vote of the rest of the Commissioners.

Moreover, even if the language of Article XV, Section 4 were ambiguous, the law would still require it be interpreted to provide an individually enforceable right in order to meet the objectives of the Arizona framers who were undeniably concerned with corporate overreach. Tucson Gas, Elec. Light & Power Co., 15 Ariz. at 308; Woods, 171 Ariz. at 291; John D. Leshy, The Making of the Arizona Constitution, 20 Ariz.St.L.J. 1, 88 (1988). Were the Commissioners' investigatory powers limited to either majority-approved investigations or veto from the majority, the efficiency of the Commission would plummet. More, it would create a dangerous gap in the bulwark of independent, objective consumer protection envisioned by the constitutional framers, allowing a regulated entity to prevent full and thorough disclosure of its undue influence practices (including even the most corrupt practices) by simply capturing the allegiance of a majority of the Commissioners. Investigations into unlawful coordination with the Commissioners could be blocked were a regulated entity to control the majority of Commissioners.

Imagine the example offered by the recent indictment of former Commissioner Gary Pierce who is alleged to have accepted illegal payments to acquire his help in promoting and passing a matter desired by a manager of a regulated water utility. [See Exhibit "I"]. If the

type of scheme alleged there extended to two more commissioners the corrupt utility would, under APS's and Pinnacle West's argument, be able to stop any and all investigations by the other two commissioners into the corruption scheme. If it is true, as alleged in the indictment, that a manager of a regulated utility would be willing to engage in bribery of one commissioner, the APS position would actually encourage them to try and corrupt two more to ensure the cover-up.

The framers of the Arizona Constitution and of the Commission's enabling statutes were far wiser than to create a system allowing, let alone rewarding, corruption. Instead, they expressly provided for individual commissioner authority to issue and enforce subpoenas, knowing that so long as a single incorruptible commissioner remained, the grant of individual investigatory powers would continue to guarantee accountability against the corrupted remainder and thereby protect Arizona's consumers. Thus, the plain meaning and grammatical construction of the constitutional language offering investigatory and subpoena powers to "the several members thereof" must be honored to meet the framers' laudable objectives of ensuring Commission-wide accountability.

The Arizona Attorney General has agreed with Commissioner Burns' position that he has individual inspection and investigation authorities. In Atty. Gen. Op. No. I16-005 (R16-002) the Attorney General addressed three questions concerning the individual investigatory and inspection powers of a Commissioner. The opinion explained, in pertinent part, the following:

Under Article XV, Section 4 of the Arizona Constitution, the Commission *and individual Commissioners* may "inspect and investigate the property, books, papers, business, methods, and affairs of any [Public Company] . . . and of any [PSC] doing business within the state." The Legislature has also provided the Commission *and individual Commissioners* statutory authority regarding P[ublic]S[ervice]C[orporation] inspections and examinations:

* * *

Section 40-241 *confers power on individual Commissioners* as well as the entire Commission. The plain language of Section 40-241(A) specifically refers to not just "[t]he commission" but also "each commissioner." By using the language "each commissioner," the Legislature clearly authorized individual Commissioners to exercise the powers in this statute. *J.D. v. Hegyi*, 236 Ariz. 39, 40-41 ¶ 6 (2014) ("If the language [of a statute] is 'subject to only one reasonable meaning," [courts] apply that meaning." (citation omitted)); *see also Fields v. Elected Officials' Ret. Plan*, 234 Ariz. 214, 218 ¶ 16 (2014) (stating that "the legislature generally avoids redundancy").

* * *

In sum, pursuant to Section 40-241, an individual Commissioner may gather information regarding a PSC's political and charitable contributions, and lobbying expenditures, by inspecting the books and records of a PSC, and examining under oath PSC personnel.

* * *

Consistent with the answer to Question 1, based on the statute's plain language, Section 40-241 confers power on individual Commissioners, not just the Commission as a whole.

[See Exh. "J" hereto (emphasis added)].

For the foregoing reasons, the powers of a single Commissioner to issue and enforce investigatory subpoenas authorized under Ariz.Const., art. XV, § 4 and A.R.S. § 40-241 cannot be limited or stopped by the remaining Commissioners. In essence, this prevents other Commissioners from using pretextual arguments to impede appropriate investigations while hiding biases created by undue influence or corruption, poor judgment, political envy, or any other motive. Meanwhile, APS and Pinnacle West are still offered the same protection. Like any other party troubled by government action against them, APS and Pinnacle West may resort to the courts to challenge the single Commissioner's jurisdiction and assert defenses to the investigatory subpoenas allowed under Arizona law. See, e.g., People ex rel. Babbitt v. Herndon, 119 Ariz. 454, 456 (1978) (listing bases for objections to administrative subpoena). APS and Pinnacle West know this, and obviously agree that they have the judicial option, having previously filed a Superior Court action to avoid the Subpoenas.

The Commissioners must therefore confirm that they have no power to limit

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Commissioner Burns' Subpoenas by either requiring pre-approval by a majority of Commissioners or by voting to quash or limit the Subpoenas. They must confirm for APS and Pinnacle West that their objection that Commissioner Burns may not individually initiate or enforce his Subpoenas or that the other Commissioners may overrule him and quash the Subpoenas are without merit, and that absent judicial intervention and order, Commissioner Burns is entitled to enforcement of the Subpoenas.

III. The Respondents Offer No Valid Objections to the Subpoenas.

Even if the Constitution allowed the other Commissioners veto power over the issuing Commissioner's Subpoenas, the Respondents offer no valid objections warranting a motion to quash.

A. The Jurisdictional Objections Fail.

The Respondents' arguments that Commissioner Burns seeks information outside the jurisdiction of the Commission fails. The principal problem with Respondents' argument is that the law recognizes in administrative agencies incredibly broad jurisdiction to conduct investigations. The Arizona courts have held that "the Commission must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the Commission's regulatory authority." Carrington v. Ariz. Corp. Comm'n, 199 Ariz. 303, 305 (App. 2000) (citing SEC v. Brigadoon Scotch Distrib. Co., 480 F.2d 1047, 1052-53 (2nd Cir. 1973) EEOC v. Kloster Cruise Ltd., 939 F.2d 920, 922 (11th Cir. 1991)). Thus, Commissioner Burns need not even have proof yet that particular forms of relevant evidence exist to support his Subpoenas. The U.S. Supreme Court explained that instead an administrative agency "has a power of inquisition" akin to that of a grand jury, which it may exercise "merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." United States v. Morton Salt Co., 338 U.S. 632, 642-43, 94 L. Ed. 401, 70 S. Ct. 357 (1950); see also Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946). The Arizona Supreme Court has adopted the same standard. Polaris Int'l Metals Corp. v. Arizona Corp. Comm'n, 133 Ariz. 500, 506 (1982) ("[A]n appropriately empowered agency 'can

investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *Id.* (quoting *Morton Salt Co.*, 338 U.S. at 642-43); *see Carrington*, 199 Ariz. at 305 (same). Thus, an agency investigator need only show that his inquiry "is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." *Morton Salt Co.*, 338 U.S. at 652; *see United States v. Stuart*, 489 U.S. 353, 359, 103 L. Ed. 2d 388, 109 S. Ct. 1183 (1989); *Carrington*, 199 Ariz. at 305 ("Accordingly, a party may resist the Commission's subpoena on grounds that the inquiry is not within its scope of authority, the order is too vague, the subpoena seeks irrelevant information, or the investigation is being used for an improper purpose, such as to harass.") (citing *People ex rel. Babbitt*, 119 Ariz. at 456).

Commissioner Burns' Subpoenas meet this low jurisdictional threshold. As noted above and in his other filings in this case and before the Superior Court, Commissioner Burns seeks information relevant to the pending APS rate request and to pending questions of Commissioner disqualification or capture, and needed to inform rulemaking proceedings in his T&D Docket and in Commissioner Dunn's ethics docket. The following examples show how the information he seeks can and will be used for central Commission decision-making in already-pending rate, transparency and ethics matters.

The evidence to be obtained will likely help prove that indeed the APS rate requests and rate request and negotiation strategy are developed and approved by officials that include Pinnacle West executives and staff, and that the rate of return or other components of the rate request and the APS rate negotiation strategy are connected to ensure Pinnacle West and APS have enough revenue to both meet their budget goals for continued influence peddling activities (via campaign or political group support, lobbying, or even civic event support used as a *quid pro quo* for leveraging political lobbying by local officials of Commissioners) and their forward-looking forecasts to shareholders, potential investors and lenders. This will give the Commissioners powerful evidence that APS has been disingenuous in its repeated denials that its rate requests seek

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anything related to political activities. It will further expose that APS has sought now (and perhaps in the past) rates intended to generate reimbursement for political and marketing activities in violation of what it knows is the Commission policy. Finally, it will show that APS is really seeking through its rate request enough funding to maintain its and its parent corporation's political speech meaning it is using its rate requests and Commission powers to force ratepayers to underwrite political speech in violation of constitutional prohibitions. There is no question such evidence would fall squarely in the rate-making and rulemaking authorities of the Commission over public service corporations.

The evidence to be obtained will demonstrate just how APS and Pinnacle West have decided upon which Commission candidates to confer their exceptional financial largesse for, or against, and just what political machinery and surrogates they have put in play to ensure that their money is well and effectively spent, that it generates as much candidate goodwill or affinity as possible, and that candidates get the message that APS and Pinnacle West are in their corner and want to know how they can best help. These operations are particularly critical in relation to the use of "dark money" groups in which APS and Pinnacle West (and the groups they support) are prohibited by law from coordinating with candidates directly or indirectly. This past week's indictment of Arizona lobbyist James Norton in connection with alleged corruption of a former Commissioner raises particular concerns. Mr. Norton has been linked to APS, with one recent article describing APS as an [a]ctive client" of Mr. Norton. [See Exhibit "K" hereto]. He and Don Brandt, APS CEO, have served on at least one high-profile campaign fundraising committee together. Given the volume of other suspicious facts concerning the massive infusion of "dark money" into the 2014 Commission election, [see Commissioner Burns' Motion for Determination of Disqualification and for Stay of Proceedings Pending Full Investigation (Expedited Ruling Requested) (filed April 27, 2017), at 4-9], and the widely

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published suspicions that it was fueled by APS/Pinnacle West interests, it is critical to know if APS or Pinnacle West used political operatives in the field to either directly or indirectly coordinate in any way with any candidate campaigns This information is central both to questions of or their surrogates. Commissioner disqualifications already pending in this case and to future rulemaking for transparency and ethics rules needed to curb any abuses in the future. Even if the investigation only demonstrates types of *unused* opportunities APS or Pinnacle West have had to potentially misuse political influence the companies chase, it draws out critical evidence that will help the Commissioners form walls against such opportunities in the future. The simple answer is, effective rules require a detailed understanding of what the mechanics of regulatory capture or influence in Arizona are or might be. It is only logical that the Commissioners would want, and need, as much information as possible about what has happened in the past to develop ways to combat it in the future. This part of the Subpoenas seeks information relevant to matters squarely in the jurisdiction of the Commission.

For these reasons, and others obvious from the scope of the Subpoenas, the information Commissioner Burns seeks is directly, even critically, relevant to rate-making, Commissioner disqualification, and transparency and ethics matters currently pending before the Commission and expressly and impliedly delegated to the Commission by the constitutional framers and the Arizona Legislature. The arguments by Respondents that the Subpoenas somehow exceed Commissioner Burns' jurisdiction are mertiless.

B. The Relevance Objections Fail.

The Respondents' relevance objections are also meritless. First, they state the wrong standard for contesting relevance of an agency administrative, investigatory subpoena. Even judicial proceedings reviewing agency investigatory subpoenas "are designed to be summary in nature." EEOC v. Tempel Steel Co., 814 F.2d 482, 485 (7th Cir. 1987). "The courts' role in a proceeding to enforce an administrative subpoena is 'extremely limited.'" McVane v. FDIC

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(In re McVane), 44 F.3d 1127, 1134-36 (2d Cir. 1995) (quoting NLRB v. C.C.C. Assoc., Inc., 306 F.2d 534, 538 (2d Cir. 1962)). The courts therefore defer to the investigating administrative official's appraisal of relevance, "which 'must be accepted so long as it is not obviously wrong." McVane, 44 F.3d at 1134-36. If Commission review were allowed, it would have to be equally deferential to Commissioner Burns.

A court must therefore enforce an administrative subpoena that is just "reasonably relevant" to something within the scope of the agency's authority. Tempel Steel Co., 814 F.2d at 485; see also FTC v. Monahan, 832 F.2d 688, 689 (1st Cir. 1987), cert. denied, 485 U.S. 987, 108 S. Ct. 1289, 99 L. Ed. 2d 500 (1988); see also, Carrington, 199 Ariz. at 305; United States v. Westinghouse Elec. Corp., 788 F.2d 164, 166 (3d Cir. 1986); EEOC v. Maryland Cup Corp., 785 F.2d 471, 475-76 (4th Cir.), cert. denied, 479 U.S. 815, 93 L. Ed. 2d 26, 107 S. Ct. 68 (1986). The issuing official must only make "a 'plausible' argument in support of" relevance, and a court would have to "enforce the subpoena if the information sought there is not 'not plainly incompetent or irrelevant to any lawful purpose'" of the agency." Casey v. FTC, 578 F.2d 795, 799 (9th Cir. 1978); Carrington, 199 Ariz. at 305 (same); Marshall v. Able Contractors, Inc., 573 F.2d 1055 (9th Cir. 1978); Federal Maritime Commission v. Port of Seattle, 521 F.2d 431 (9th Cir. 1975). Based on the relevancy analysis provided above and in the other filings incorporated herein [see Exhibits "E" and "F" hereto], Commissioner Burns has far exceeded this low threshold and the Subpoenas would have to be enforced against the relevance objections.

Finally, there is no valid objection that the Subpoenas seek broad categories of information. The courts interpret the concept of relevance broadly. See McVane, 44 F.3d at 1134-1136 (citing United States v. Arthur Young & Co., 677 F.2d 211, 216 (2d Cir. 1982), aff'd in part and rev'd in part on other grounds, 465 U.S. 805 (1984), cert. denied, 466 U.S. 936 (1984); *United States v. Noall*, 587 F.2d 123, 125 (2d Cir. 1978) (standard for relevance of sought-after tax records is whether the documents "might have thrown light upon" the object of the investigation), cert. denied, 441 U.S. 923, 60 L. Ed. 2d 396, 99 S. Ct. 2031 (1979); accord Linde Thomson, 5 F.3d at 1517 (wide range of investigation is appropriate where

"multifaceted activities are involved, and the precise character of possible violations cannot be known in advance") (quoting FTC v. Texaco, Inc., 180 U.S. App. D.C. 390, 555 F.2d 862, 877 (D.C. Cir.) (en banc), cert. denied, 431 U.S. 974 (1977)).). An agency is allowed "to investigate by means of a 'broad, generic document request' because before the agency has collected and analyzed the potentially relevant information it has no choice but to use general discovery. Arthur Young & Co., 677 F.2d at 216. Commissioner Burns does not yet know precisely what relevant records Pinnacle West and APS keep, or what witnesses will have what particularly relevant knowledge or information. Therefore, broad subpoena and deposition requests are not objectionable.

C. The First Amendment Objection Fails.

Hoping to capitalize on general expressions in *Citizens United v. FEC*, 558 U.S. 310 (2010), APS and Pinnacle West assert that the Subpoenas violate their First Amendment Rights. There are three fatal flaws to this argument.

First, even if the Subpoenas sought information that implicated First Amendment interests, First Amendment interests will be overcome by "compelling interests" of a government agency. *See United States v. Inst. for Coll. Access & Success*, 27 F. Supp. 3d 106, 115 n.8 (D.D.C. 2014). And, "a compelling interest exists — and [] a subpoena will be enforced regardless of potential First Amendment issues — where the agency seeking the information is conducting an investigation pursuant to its statutory authority." *Id.* There is no question that the matters Commissioner Burns is investigating fall within his express jurisdiction and authorities as a member of the Commission – therefore a sufficient compelling interest in the investigation exists to overcome any First Amendment claims.

Second, the First Amendment rights recognized in corporations like APS or Pinnacle West do not entitle them to protection against discovery of information for legitimate government purposes. Instead, they may preclude certain government action that actually and directly substantively restricts speech or association with no sufficient countervailing government interest, as when a government attempts to directly limit corporate political spending on independent advertising that is completely uncoordinated with any candidate or

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campaign committee. Where the government intervention is disclosure for legitimate government purposes of what political spending the corporation is involved in, the First Amendment interests provide no barriers. Eight of the nine U.S. Supreme Court justices deciding Citizens United agreed on that point. See Citizens United, 558 U.S. 310 (2010).

Thus, precedent since Citizens United has confirmed that government power to require corporate disclosure regarding political spending extends well beyond its power to regulate and limit the amount or content of political speech. The court in Vt. Right to Life Comm., Inc. v Sorrell, 875 F.Supp. 2d 376, 386 (D.Vt. 2012) aptly explained this distinction:

The Citizens United court made clear that the power to require disclosure extends beyond the power to limit speech, analogizing that although Congress 'has no power to ban lobbying itself,' it may require registration and disclosure of lobbyists. 130 S. Ct. at 915 (citing United States v. Harriss, 347 U.S. 612, 625, 74 S. Ct. 808, 98 L. Ed. 989 (1954)). Indeed, Citizens United went further toward solidifying this principle, explicitly endorsing a system of relatively unrestricted political speech paired with 'effective disclosure,' noting that many of Congress's findings of influencepeddling in promulgating campaign finance legislation 'were premised on a system without adequate disclosure.' 130 S. Ct. at 916.

Vt. Right to Life Comm., Inc., 875 F. Supp. 2d at 386. What APS and Pinnacle West challenge is an elected official's right to require disclosure of political spending and coordination That sort of disclosure has been upheld as valid and non-infringing on First Amendment rights under the Citizens United ruling.

Moreover, to the extent Commissioner Burns seeks information about political activity, the request relates specifically APS and Pinnacle West's arrangements or such activity to determine, in part, whether it violates the Arizona and/or federal laws on coordinating with a campaign or candidate, which in turn would violate contribution limits that all pass First Amendment muster. As the laws restricting directly and indirectly coordinated spending are enforceable over First Amendment objections, the investigation needed to determine if those laws have been violated or not is also not prohibited by First Amendment concerns.

As to evidence of campaign spending and support sufficient to create grounds for Commissioner disqualification, investigation of the same is not barred by First Amendment

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principles because it, too, implicates overriding and compelling interests in informing parties before the Commission, the public the Commissioners are there to protect, and the Arizona voters and citizenry in general of potential bias that may create due process violations and constitutionally require Commissioner recusal. These are critical and compelling public interests served by the investigation and disclosure demanded, and they therefore overcome any First Amendment challenges. See McConnell v. Fed. Election Comm'n., 540 U.S. 93 (2003); Buckley v. Valeo, 424 U.S. 1 (1976).

Finally, a First Amendment challenge requires specific allegations and proof of a detailed threat of chilling or impairing fee speech or association. The target "who believes that an administrative subpoena issued during an investigation will infringe his First Amendment rights must make a 'prima facie showing of arguable first amendment infringement." Doe v. U.S. SEC, No. C 11-80209 CRB, 2011 U.S. Dist. LEXIS 132970, at *5-6 (N.D. Cal. Nov. 17, 2011) (quoting Brock v. Local 375, Plumbers Int'l Union, 860 F.2d 346, 350 (9th Cir. 1988) (citing *Buckley*, 424 U.S. at 66)). Without that prima facie case of First Amendment infringement, even "[a] court 'may not intervene in an investigation, notwithstanding an allegation of interference with speech and associational rights" Dole v. Local Union 375, Plumbers Int'l Union, 921 F.2d 969, 973-74 (9th Cir. 1990) (citing McLaughlin, 880 F.2d at 175).

Respondents have not made a prima facie showing of First Amendment infringements caused by the Subpoenas. "A prima facie showing requires 'objective and articulable facts, which go beyond broad allegations or subjective fears." Doe, 2011 U.S. Dist. LEXIS 132970, at *5-6; see Dole, 921 F.2d at 973-74; Brock, 860 F.2d at 350. At a minimum, such objective, articulable facts would require a demonstration by APS and Pinnacle West that "the subpoenas will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of . . . associational rights." Then, APS and Pinnacle West must further "demonstrate a causal link between the disclosure and the prospective harm to associational rights," and "that [they are] the type of association where exposure could incite threats, harassment, acts of retribution, or

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other adverse consequences that could reasonably dissuade persons from affiliating with [them]." Dole, 921 F.2d at 972.

The foregoing demonstrations require actual proof of detailed impacts on speech or association from real life; mere general allegations or speculative assertions that the disclosure required by the Subpoenas will chill future speech or association are never enough. The Respondents were required to demonstrate "in detail 'how the summons has actually impacted (or threatens to impact)' on the organization's activities." Id. Even conclusory affidavits are not enough proof. Id. "A prima facie showing entails, instead, 'a careful documentation' of membership decline" or other actual, real-world impacts chilling speech or association. Id. APS and Pinnacle West have failed to offer any such detailed proof of actual negative impacts on their political speech or association with others. Their generalized assertions that the Subpoenas might chill speech or association are wholly insufficient to even raise a First Amendment issue.

Instead, the evidence shows just the opposite impact on APS and Pinnacle West. Commissioner Burns issued his subpoenas in August, 2016; several months later, APS and Pinnacle West's CEO proudly announced Pinnacle West's new political activity plans, publishing data and a policy assuring that Pinnacle West will maintain at least as active a role in political speech in the future as it has in the past. [See Exhibits "G" and "H" hereto]. Indeed, despite the Subpoenas having been issued, Pinnacle West openly spent millions of dollars in support of candidates for the Commission in the past election cycle. They obviously found vendors with which to spend that money. Nothing about the Subpoenas made them a political pariah; rather, one may reasonably expect that local lobbyists, marketing specialists, and other campaign and political operatives vie longingly for APS's and Pinnacle West's substantial business. No evidence exists that others are turning away Pinnacle West political contributions because of the Subpoenas. The Subpoenas have not slowed Pinnacle West and APS in any way; but have instead made their political activities even bolder and more public than ever before. They are entirely disingenuous in claiming some fear that the Subpoenas are chilling their exercise of First Amendment rights.

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The Subpoenas are not barred or restricted by any First Amendment interests, and given the failure of APS and Pinnacle West to meet their prima facie detailed showing of First Amendment infringement, the Commission (just like a court) could not interfere or require any further analysis of the First Amendment issues.

D. The Harassment Objection Fails

The type of harassment that might make a Subpoena objectionable is also not provable by the types of generalized, argumentative assertions Pinnacle West and APS make. They charge Commissioner Burns with a vendetta; yet the record here proves Commissioner Burns is concerned with very legitimate matters of central interest to the Commission's most vital functions and responsibilities. He is proceeding to investigate matters about which there is much smoke to see if they are grounded in much fire.

APS and Pinnacle West may bristle at Commissioner Burns' determination to fully understand the entire process by which they plan for, budget for, and execute upon political spending and influence peddling, but APS and Pinnacle West acknowledge publicly that the near exclusive source of funds Pinnacle West has for that spending is APS ratepayer payments. The idea that a Commissioner, buoyed and encouraged by APS customer concerns he has heard, would want to understand if customer rates could be reduced if APS and Pinnacle West would limit their seemingly extravagant political spending is only motivated by a vicious desire to harass assumes provably false facts. The idea that despite the real prospects of Commissioner disqualifications APS and Pinnacle West have likely created by their own influence peddling strategies, Commissioner Burns is really only out to harass is demeaning. And, the notion that Commissioner Burns does not really need to know what APS and Pinnacle West have done in the past to suggest the best, most effective changes in ethical and transparency rules for the future is just illogical.

Moreover, given the recent indictment of a political consultant linked publicly with them, one might assume APS and Pinnacle West would welcome a name-clearing exercise, showing that they have never used Mr. Norton or anyone like him to help coordinate with political candidates or campaigns, especially those of Commission candidates. Their

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continued resistance in light of such opportunities is curious.

What's more, APS's and Pinnacle West's aggressive attacks on Commissioner Burns' motives are irresponsible and legally powerless. To overcome an administrative, investigatory subpoena with claims of harassment one must show "firm evidence of bad faith." SEC v. Howatt, 525 F.2d 226, 229 (1st Cir. 1975). The record here demonstrates only patience, justification, and subpoenas APS and Pinnacle West desperately want to avoid for some reason, but which target matters at the heart of the Commission's functions and APS's responsibilities under law. There is no evidence of harassment or other improper purposes behind the Subpoenas.

E. The Objections to Mr. Brandt's Deposition.

The Respondents allege Commissioner Burns is not entitled to select witnesses, such as CEO Donald Brandt, but that they should be allowed to identify and select the witnesses for Commissioner Burns whom they believe have the most relevant information. It is hardly surprising that Commissioner Burns has noticed CEO Brandt. After all, it is he who issued the shareholder statement in 2015 indicating why Pinnacle West decided to get involved in political activity in the 2014 Commission election. [See Exhibit "L" hereto]. It is also highly likely that he was the final approval source on the Pinnacle West Political Expenditure Policy that is now prominently displayed on their web site, and it is hardly a stretch to believe that the CEO would want to be informed of tens of millions of dollars in political, campaign, and charitable spending the company is doing each year and the benefits of it. Given how ubiquitous a part of their operations political-influence spending appears to be, it is reasonable to expect the CEO to be abreast of and to help make decisions about future political spending strategies and outcomes. Pinnacle West and APS have not objected that CEO Brandt has no relevant information about political spending, lobbying, marketing or other influence peddling by APS or Pinnacle West, and the facts indicate he does – perhaps as much as anyone else, and in connection with the matters most sensitive to APS and Pinnacle West some of the most significant information that few others might possess. There is no valid objection to taking testimony from Mr. Brandt.

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F. The Objections to Public Disclosure of Information.

The Respondents claim they need not respond because Commissioner Burns has threatened to make public what they disclose in response to the Subpoenas. Given Arizona's laws on public records and Commission proceedings, their claims to a complete right of privacy and confidentiality is dubious. Even so, their approach to this issue is all wrong. Rather than asking Commissioner Burns, or the courts if he won't agree, to some protective terms, they refuse to respond at all and seek to quash the Subpoenas entirely. This indicates that the confidentiality issue is not a real issue at all – just another excuse to refuse to produce the information required entirely.

Bolstering that impression, APS and Pinnacle West have not identified in any detail what portions of the responsive records or information is sensitive and deserves protection, and for what reasons. Arizona law is well developed on what type of corporate information is entitled to protection, see A.R.S. § 44-401, et seq., and it would be the Respondent's obligation as custodian of the records to identify each record deserving protection and why. The reason they have not done so may be obvious – perhaps just identifying the categories of responsive records they have would likely prove there is much to see and consider. They would rather keep the Commission (and the courts) in the dark and ignorant and cast about for a complete bar to the investigation. Given that there are other ways to address their supposed confidentiality concerns, the Respondents certainly do not provide a basis for refusing to comply fully with the Subpoenas. Their confidentiality objections must be rejected.

IV. **Disqualification Issues**

Commissioner Burns has noted significant disqualification issues involving all the other Commissioners and has requested a stay of the APS rate case and proper investigation. There is no justification for proceeding to votes on the rate case until the serious issues of potential disqualification have been resolved fully. To do otherwise is a disservice to the consumers who might be forced to pay increased rate charges prematurely approved by a Commission with constitutionally disqualified members, and even to APS and Pinnacle West who could be forced in later proceedings to refund such monies and recommence the rate case. That is why

Commissioner Burns has filed with this motion a parallel emergency motion to suspend the APS rate case.

But the disqualification issues have deeper meaning for this motion. If indeed reason exists to disqualify Commissioners from acting on APS matters, those same reasons would require disqualification from deciding the subpoena objections raised by APS and Pinnacle West. If the Commissioners were to uphold such objections when they should have declared their conflict and recused themselves, their orders will be subject to reversal and the Commissioners involved will have violated their duties under law and violated rights of Commissioner Burns and the intervenors and Arizona consumers effected by their votes.

Yet, Commissioner Burns asks the Commissioners to make a decision to *not* act on the objections and to instead tell APS and Pinnacle West and Mr. Brandt that the Commissioners have no power to and are not going to interfere with Commissioner Burns' investigation, and that if the Respondents do not obtain a court order limiting the Subpoenas, the Commissioners believe Commissioner Burns is entitled to have his Subpoenas fully complied with, without any interference from the other Commissioners. As the Commissioners will not have taken an affirmative position or action on the objections one way or the other, the disqualification issues are not implicated.

V. The Commissioners Must Immediately Direct the Administrative Law Judge to Decide the Rate Case Motions.

Commissioners Burns sought expedited review and ruling by the Administrative Law Judge of his Rate Case Motions seeking help of the Administrative Law Judge in securing APS and Pinnacle West witnesses and questioning them on matters relevant to the pending rate case, and also seeking an immediate suspension of this rate case and initiation of an investigation into potential Commissioner Disqualification. Expedited decision was, and remains, necessary because APS is working to have its rate demands decided in the very near future and without an appropriate stay of the case and expedited ruling Commissioner Burns' right to conduct a proper pre-decision development of the relevant facts will be violated, as might the rights of Commissioner Burns, all intervenors, all APS customers, and all Arizona

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citizens to have the APS rate request decided only by Commissioners who are not constitutionally disqualified from deciding matters involving APS due to APS's or Pinnacle West's support.

The Administrative Law Judge indicated to Commissioner Burns through his counsel at the start of the evidentiary hearing in this case that she was not going to decide his requests absent direction from the full Commission. Accordingly, Commissioner Burns sought an expedited staff meeting at which he could raise the issues and move for appropriate action by the remaining Commissioners. That staff meeting was noticed for this past Tuesday, May 30, 2017, but was cancelled at the last minute when Commissioner Dunn requested the matter be pulled. Commissioner Burns intended to inform the other Commissioners at the staff meeting that given the disqualification issues, the other Commissioners could not decide his Rate Case Motions and the only appropriate action by the Commissioners regarding the motions was to direct the Administrative Law Judge that she was to promptly decide Commissioner Burns' Rate Case Motions before any other action occurs in this rate case. The Commissioners must issue that directive to the Administrative Law Judge.

The Rate Case Motions raise fundamental issues involving exercise by Commissioner Burns of his right to call witnesses and develop testimony and information on matters he contends are central to the rate case decision, as explained herein and by the filings incorporated hereby. They further raise fundamental constitutional due process issues involving the potential obligation of other Commissioners to recuse themselves from any APS matter, including this one. [See Commissioner Burns' Motion for Determination of Disqualification and for Stay of Proceedings Pending Full Investigation (Expedited Ruling Requested) (filed April 27, 2017)]. Given the disqualification issues Commissioner Burns has presented, it would be inappropriate for the other Commissioners to decide these Rate Case Motions.

After all, the Arizona Supreme Court recognizes as one of the most elemental and lasting maxims of our law the rule that "no man may be judge in his own cause." Terrell v. Tempe, 35 Ariz. 120, 123 (1929). Emp. 's Benefit Ass'n v. Johns, 30 Ariz. 609, 620 (1926)

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("One of the oldest and most salutary maxims of law is that no man shall be a judge in his own cause, and any agreement to the contrary in cases like this, made in advance of the actual issue arising, is both inequitable and illegal.") It reaffirmed this policy just days ago in *Horne v. Polk*, No. CV-16-0052-PR, 2017 Ariz. LEXIS 150, at *9 (May 25, 2017).

The right to a neutral adjudicator has long been recognized as a component of a fair process. One cannot both participate in a case (for instance, as a prosecutor) and then decide the case. Blackstone observed that a judge must not rule in a cause in which he is a party, "because it is unreasonable that any man should determine his own quarrel." Am. Gen. Ins. Co. v. Fed. Trade Comm'n, 589 F.2d 462, 463 (9th Cir. 1979) (quoting Blackstone, Commentaries on the Laws of England, I, 91). In In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955), the United States Supreme Court recognized the due process principle that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." . . . "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness." Id. at 136; accord Marshall v. Jerricho, Inc., 446 U.S. 238, 243, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980) ("[J]ustice must satisfy the appearance of justice, and this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." (internal citation and quotation marks omitted)).

The decision in Cty. of Cochise ex rel. Riley v. Good, 453 P.2d 544, 545 (App. 1969) is instructive of how this rule applies. There, the Court of Appeals ruled that a county attorney could not be required to obtain approval of the Board of Supervisors before prosecuting a supervisor for misconduct. "To require that the county attorney secure the consent of the Board of Supervisors before initiating such procedure would do violence to the fundamental principle that a man can never be a judge in his own case." Id. Likewise, here, to address Commissioner Burns' Rate Case Motions would require the other Commissioners to first decide their own disqualification and find themselves to be not disqualified. Then, as to the motion requesting initiation of a disqualification investigation, the Commissioners would have to decide if cause existed to initiate an investigation into their own disqualification. Those types of decisions would be a fundamental due process violation under the foregoing Arizona law.

Moreover, if the Commissioners were to decide the motions and it were later determined by a court that any of them was disqualified and should have recused themselves, the entire decision would need to be rejected as void. "The bias of the interested person taints the action of the whole body." *Schumacher v. Bozeman*, 174 Mont. 519, 531, 571 P.2d 1135, 1142 (1977) (citing *Pyatt v. Mayor & Council of Borough of Dunellen*, 9 N.J. 548, 89 A.2d 1, 5 (1952)) "First, the participation of the disqualified member in the discussion may have influenced the opinion of the other members; and, secondly, such participation may cast suspicion on the impartiality of the decision. [citations omitted] It being impossible to determine whether the virus of self-interest affected the result, it must needs be assumed that it dominated the body's deliberations, and that the judgment was its product." *Piggott v. Borough of Hopewell*, 22 N.J. Super. 106, 91 A.2d 667, 670 (1952).

Thus, the Commissioners' only available action on the Rate Case Motions is to direct the Administrative Law Judge to decide them. But, given the pending close of the rate case, the Commissioners should direct that they be decided promptly and before any other actions are taken in the rate case.

VI. Conclusion

The Commissioners cannot hear the objections of Respondents, APS, Pinnacle West, and CEO Brandt, because the governing law entitles each Commissioner to individually pursue an inspection of records and investigation through subpoenas and witness examination. They also should not hear such objections given the pending disqualification issues which require factual development through the Subpoenas. Though such limitations are narrow, there are established judicial limitations on the administrative subpoenas, and the Respondents may avail themselves of them in court. Their interests are fully protected by the judicial process. Commissioner Burns has already started a court action, and the Respondents can easily resurrect objections to the Court where they will get a fair hearing by the proper authority to decide questions of constitutional powers and statutory interpretation.

Even if the Commissioners were to decide that they had some authority to intervene in another Commissioner's investigation, the objections the Respondents make to the Subpoenas

BASKIN KICHARDS PLC	2901 N. Central Avenue, Suite 1150	Phoenix, Arizona 85012	Felephone 602-812-7979	Facsimile 602-595-7800
BASKIN	2901 N. Centra	Phoenix,	Telephon	Facsimil

are legally insufficient and would not allow a court to intervene and limit the Subpoenas. For the same reasons, the Commissioners would have no legal authority to interfere and must reject the objections.

In summary, then, it is time to stop the procedural games and get on with finding the

In summary, then, it is time to stop the procedural games and get on with finding the facts central to important Commission matters. The Commissioners should immediately enter their order confirming that Commissioner Burns has individual authority to issue and enforce the Subpoenas issued by Commissioner Burns on August 25, 2016, that the remaining Commissioners will not be acting upon the objections against the Subpoenas filed with the Commission by or on behalf of APS, Pinnacle West and APS CEO Donald Brandt, and that unless those Respondents obtain a court order limiting the Subpoenas, the Subpoenas are subject to immediate enforcement by Commissioner Burns without interference by the other Commissioners. The Commissioners should also issue their directive to the Administrative Law Judge that she decide the pending Rate Case Motions from Commissioner Burns promptly and before any other actions are taken in this rate case.

DATED this 2nd day of June, 2017.

COMMISSIONER ROBERT BURNS

BASKIN RICHARDS PLC

Killed & Bens

William A. Richards

Alan Baskin

Leslie Ross

2901 North Central Avenue, Suite 1150

Phoenix, Arizona 85012

Attorneys for Commissioner Robert Burns

BASKIN RICHARDS PLC 2901 N. Central Avenue, Suite 1150 Phoenix, Arizona 85012 Telephone 602-812-7979 Facsimile 602-595-7800	1	
	2	ORIGINAL and thirteen (13) copies
	3	of the foregoing filed in Docket Nos. E-01345A-16-0036 and E-01345A-16-0123
	4	this 2nd day of June, 2017 with:
	5	Docket Control
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On this 2nd day of June, 2017, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Bob Burns, Commissioner - A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

ATC Outdoor DAS, LLC 10 Presidential Way Woburn Massachusetts 01801

Granite Telecommunications, LLC 100 Newport Ave. Ext. Quincy Massachusetts 02171

Americom Technologies, Inc P.O. Box 990-165 Boston Massachusetts 02199

New Horizons Communication Corp. 420 Beford Street, Suite 250 Lexington Massachusetts 02420

GC PIVOTAL LLC 265 Winter St. Waltham Massachusetts 02451

Telecom Management, Inc. 39 Darling Ave. South Portland Maine 04106

Southwestern Telephone Company, Inc. 24 Depot Square, Unjit 2 Northfield Vermont 05663

Alliance Global Networks, LLC ALLIANCE GLOBAL NETWORKS LLC 1221 Post Rd E Westport Connecticut 06880

Teledata Solutions, Inc. 1767 Route 22 West Union New Jersey 07083

IDT America Corp. 550 Broad St., 17th Floor Newark New Jersey 07102

Telco Experts, LLC 169 Ramapo Valley Dr. Floor 3 - 303 Oakland New Jersey 07436

Network Billing System LLC 155 Willowbrook Blvd. Wayne New Jersey 07470

Custom Network Solutions, Inc. 210 Route 4 E., Ste. 201 Paramus New Jersey 07652 ATC Outdoor DAS, LLC 116 Huntington Ave., 11th Fl. Boston Massachusetts 02116

Granite Telecommunications, LLC Attn: Tax Department 100 Newport Avenue Extension Quincy Massachusetts 02171

Americom Technologies, Inc dba Network Utilization Services PO Box 990-165 Boston Massachusetts 02199

iBasis Retail Inc. 10 Maguire Rd., Bldg. 3 Lexington Massachusetts 02421

Grasshopper Group, LLC 197 1st Ave., Ste. 200 Needham Massachusetts 02494

800 Response Information Services II/05 Williston Road, Ste. 200 South Burlington Vermont 05403

ComTech21, LLC One Barnes Parks S. Wallingford Connecticut 06492

Alliance Group Services, Inc. Alliance Group Services, Inc. 1221 Post Road East Westport Connecticut 06880

IDT America Corp. 520 Broad St. Newark New Jersey 07102

IPC Network Services, Inc. 3 Second Street, 15th Floor Jersey City New Jersey 07311

Network Billing Systems, L.L.C. 155 Willowbrook Blvd. Wayne New Jersey 07470

Custom Network Solutions, Inc. 210 Route 4 E., Ste. 102 Paramus New Jersey 07652

Spectrotel, Inc. 3535 State Hwy 66 - 7 Neptune New Jersey 07753 Verizon Long Distance LLC One Verizon Way Mail Code VC53S460 Basking Ridge New Jersey 07920

Karl Tucker MCI COMMUNICATIONS SERVICES, INC One Verizon Way Baskin Ridge New Jersey 07920

VERIZON WIRELESS (VAW) LLC One Verizon Way Mailcode VC53S480 Basking Ridge New Jersey 07920

ALLTEL COMMUNICATIONS, LLC One Verizon Way, Mailcode VC53S475 Basking Ridge New Jersey 07920

Teleport Communications America, LLC Attn Robert Cancillieri One AT&T Way, Room 3B111H Bedminster New Jersey 07921

BCN Telecom, Inc. 1200 Mt. Kemble Ave., 3rd Floor Morristown New Jersey 07960

X2Comm, Inc. 270 S. Main St. Flemington New Jersey 08822

STi Prepaid, LLC 919 Third Ave., 11th Floor New York New York 10022

Time Warner Cable Information Services (Arizona), LLC 60 Columbus Circle New York New York 10023

Metropolitan Telecommunications of Arizona, Inc. dba MetTel 55 Water St., 32nd Floor New York New York 10041

MCC Telephony of the West, LLC One Mediacom Way Mediacom Park New York 10918

Robert Millar CROWN CASTLE NG WEST, LLC 2000 Corporate Drive Canonsburg Pennsylvania 15317

Crown Castle NG West LLC 2000 Corporate Dr. Canonburg Pennsylvania 15317 Verizon Select Services, Inc. 1 Verizon Way, Mail Cod VC53S455 Basking Ridge New Jersey 07920

Marie Cataldo VERIZON LONG DISTANCE, LLC One Verizon Way, MC VC21E027A Basking Ridge New Jersey 07920

ALLTEL COMMUNICATIONS OF THE SWENGED WINDOWS AND STREET SWENGER SWENG STREET STREET STREET SWENGER SWENG STREET SWENGER SWENGE

GILA RIVER CELLULAR GENERAL PAR MERSHWay, Mailcode VC53S475 Basking Ridge New Jersey 07920

AT&T Corp. Attn: Robert Cancillieri One AT&T Way, Rm 3B111H Bedminster New Jersey 07921

Touchtone Communications, Inc. 16 S. Jefferson Rd. Whippany New Jersey 07981

KDDI America Inc. 825 Third Ave., 3rd Floor New York New York 10022

Time Warner Cable Business LLC 60 Columbus Circle New York New York 10023

Metropolitan Telecommunications of রুট্নিস্পর্যাহার, 32nd Floor New York New York 10041

BCM One, Inc. 521 5th Ave, 14th Floor New York New York 10175

Globalinx Enterprises, Inc. c/o 5LINX Enterprises, Inc 275 Kenneth Dr. Rochester New York 14623

NewPath Networks, LLC 2000 Corporate Dr. Canonsburg Pennsylvania 15317

NewPath Networks, LLC 2000 Corporate Dr. Canonburg Pennsylvania 15317

Snet America, Inc. dba FRONTIER LONG DISTANCE 100 CTE Dr. Dallas Pennsylvania 18612

NAVAJO COMMUNICATIONS CO OF A20 CTE Drive
Dallas Pennsylvania 18612

KONATEL INC. 1910 Minno Drive, Suite 210 Johnstown Pennsylvania 15905

Frontier Communications of the Southwest, Inc. 100 CTE Drive Dallas Pennsylvania 18612

CITIZENS TELECOM - ARIZONA (MOHAVE) 100 CTE Drive Dallas Pennsylvania 18612

Frontier Communications Online and Long Distance,Inc. 100 CTE Dr. Dallas Pennsylvania 18612

Broadview Networks, Inc. 1018 W. 9th Ave. King of Prussia Pennsylvania 19406

T-MOBILE USA, INC. 2711 Centerville Rd., Ste. 400 Wilmington Delaware 19808

TracFone Wireless, Inc Corporate Creations Network 3411 Silverside Road, Rodney Bldg. #104 Wilmington Delaware 19810

VERIZON LD fka BELL ATLANTIC COMM 22001 Loudoun County Parkway Ashburn Virginia 20147

France Telecom Corporate Solutions, LLC 13775 McLearen Rd. Mailstop 1100 Oak Hill Virginia 20171

Better World Telecom, Inc. 11951 Freedom Drive, 13th Fl. Reston Virginia 20190

Global Tel*Link Corporation Attn: Susan Cockerham 12021 Sunset Hills Rd. - 100 Reston Virginia 20190

Better World Telecom, LLC 11951 Freedom Dr. 13th Floor Reston Virginia 20190

BT Communications Sales, LLC 11440 Commerce Park Dr. - 1000 Reston Virginia 20191 CITIZENS TELECOM AZ WHITE MOUNTEAINIS e Dallas Pennsylvania 18612

Frontier Communications of America, IND CTE Dr.

Dallas Pennsylvania 18612

Comcast Phone of Arizona, LLC Attn: Amee Hartman 200 Cresson Blvd. Phoenixville Pennsylvania 19460

METRO PCS 2711 Centerville Rd., Ste. 400 Wilmington Delaware 19808

Eric J. Lacey STONE MATTHEIS XENOPOULOS & BREW, PC 1025 Thomas Jefferson ST, NW, 8th FL West Tower Washington District of Columbia 20007

Michael W Quinn TIME WARNER CABLE BUSINESS, LLC (ARIZONA) 13820 Sunrise Valley Drive Herndon Virginia 20171

XO Communications Services, Inc 13865 Sunrise Valley Dr. Herndon Virginia 20171

Value-Added Communications, Inc. Attn: Susan Cockerham 12021 Sunset Hills Rd. - 100 Reston Virginia 20190

Public Communications Services, Inc. Attn: Susan Cockerham

12021 Sunset Hills Rd., Ste. 100 Reston Virginia 20190

DSI-ITI, LLC 12021 Sunset HIlls Rd, Ste. 100 Reston Virginia 20190

BT Communications Sales, LLC 11440 Commerce Park Dr. Reston Virginia 20191

Kyle J Smith 9275 Gunston Rd Fort Belvoir Virginia 22060

VIA SAT, INC. 1420 Spring Hill Road, Suite 401 McLean Virginia 22102

Norstar Telecommunications, LLC 10025 Scenic View Rd. Vienna Virginia 22182 NextGen Communications, Inc. 275 W. St., - 400 Annapolis Maryland 21401

TOSHIBA AMERICA INFORMATION SYSTEMS, INC. 1420 Spring Hill Road, Suite 401 McLean Virginia 22102

SPOK INC. 6850 Versar Center Ste. 420 - Tax Department Springfield Virginia 22151

Amerivision Communications, Inc. 999 Waterside Dr., Ste. 1910 Norfolk Virginia 23510

Access Point, Inc. 1100 Crescent Green - 109 Gary North Carolina 27518

Bandwidth.com CLEC, LLC 900 Main Campus Dr. - 500 Raleigh North Carolina 27606

Conterra Ultra Broadband, LLC 2101 Rexford Rd., Ste. 200E Charlotte North Carolina 28211

Voicecom Telecommunications, LLC 5900 Windward Pkwy., Ste. 500 Alpharetta Georgia 30005

CLOUDCALL INC. fka SYNETY, INC. 6250 Shiloh Road, Suite 240 Alpharetta Georgia 30005

1 800 COLLECT 1725 Windward Concourse, Ste. 150 Alpharetta Georgia 30005

STREAM COMMUNICATIONS, LLC 6250 Shiloh Road, Suite 240 Alpharetta Georgia 30005

Access2Go, Inc. 6250 Shiloh Rd., Suite 240 Alpharetta Georgia 30005

New Century Telecom, Inc. 3050 Royal Blvd. South, Ste. 175 Alpharetta Georgia 30022

Stratus Networks, Inc. 1595 Peachtree Pkwy., Ste. 204-337 Cumming Georgia 30041

Interstate Telecommunications, Inc. 1385 Weber Industrial Dr. Cumming Georgia 30041

Pay Tel Communications, Inc. P.O. Box 8179 Greensboro North Carolina 27419

Access Point, Inc. 1100 Crescent Green, Ste. 109 Cary North Carolina 27518

ACN Communications Services, Inc. 1000 Progress Place Concord North Carolina 28025

Entelegent Solutions, Inc. 3800 Arco CorpDr. - 310 Charlotte North Carolina 28273

Susan Cockerham CREXENDO BUSINESS SOLUTIONS, INC 1725 Windward Concourse, Suite 150 Alpharetta Georgia 30005

PATRIOT MOBILE, LLC fka EOS MOBILE HOLDINGS 6250 Shiloh Rd., Suite 240 Alpharetta Georgia 30005

DIGIUM CLOUD SERVICES, LLC 6250 Shiloh Rd., Ste. 240 Alpharetta Georgia 30005

THE PEOPLE'S OPERATOR USA, LLC 6250 Shiloh Rd., Suite 240 Alpharetta Georgia 30005

American Phone Services, Corp. 308 Maxwell Road, Suite 100 Alpharetta Georgia 30009

T.N.C., Inc. 450 Old Peachtree Rd. NW, Ste. 101A Suwanee Georgia 30024

HUGHES NETWORK SYSTEMS, LLC 1595 Peachtree Parkway, Ste. 204-337 Cumming Georgia 30041

WDT World Discount TERE Preschible at Rivey Cote. 204-337 Cumming Georgia 30041

Kenny Perkins 3075 Breckinridge Boulevard, Suite 425 Duluth Georgia 30096-4981

Tele Circuit Network Corporation 1815 Satellite Blvd. - 504 Duluth Georgia 30097

Bellsouth Long Distance, Inc. 675 W. Peachtree St., Rm 17E21 Atlanta Georgia 30308 Voicecom Telecommunications LLC 5900 Windward Pkwy Ste 500 Alpharetta Georgia 3005

Tele Circuit Network Corporation 1815 Satelite Blvd. - 504 Duluth Georgia 30097

U.S. South Communications, Inc. 250 Williams St., Ste. M100 Atlanta Georgia 30303

IP NETWORKED SERVICES 1050 Crown Pointe Parkway, Suite 1500 Atlanta Georgia 30338

MOMENTUM TELECOM, INC. 1050 Crown Pointe Parkway Suite 1500 Atlanta Georgia 30338

Global Crossing Telecommunications, Inc. 1050 Crown Pointe Parkway, Suite 1500 Atlanta Georgia 30338

Telrite Corporation 2300 Windy Ridge Pkwy, Suite 350S Atlanta Georgia 30339

RELIANT COMMUNICATIONS, INC. 801 International Parkway, 5th Fl. Lake Mary Florida 32746

CONNECTME LLC 242 Rangeline Road Longwood Florida 32750

NEXTIVA INC. 242 Rangeline Road Longwood Florida 32750

SMALL OFFICE SYSTEMS, INC. 242 Rangeline Road Longwood Florida 32750

PANTERRA NETWORKS, INC. 242 Rangeline Road Longwood Florida 32750

BLUE OCEAN TECHNOLOGIES, INC. 242 Rangeline Road Longwood Florida 32750

COMM-CORE LLC 242 Rangeline Road Longwood Florida 32750

S-NET COMMUNICATIONS, INC. 242 Rangeline Road Longwood Florida 32750 GLOBALSTAR USA, LLC 1050 Crown Point Parkway Suite 1500 Atlanta Georgia 30336

TIME WARNER CABLE IN SOURCE TO SOURC

Ionex Communications North, Inc. dba Birch Communications Attn: Tax Department 420 Interstate North Pkwy, SE Atlanta Georgia 30339

TELETONIX COMMUNICATIONS, LLC 4800 Spring Park Rd. #16 Jacksonville Florida 32207

HJN Telecom, Inc. dba Reliant Communications, Inc. 801 International Parkway, 5th FL Lake Mary Florida 32746

OMNISPRING LLC 242 Rangeline Road Longwood Florida 32750

VOIP STREET, INC. dba VOIP INNOVATIONS 242 Rangeline Road Longwood Florida 32750

DENTALTEK LLC 242 Rangeline Road Longwood Florida 32750

ESCO TECHNOLOGIES, LLC 242 Rangeline Road Longwood Florida 32750

GREAT CALL, INC. 242 Rangeline Road Longwood Florida 32750

IPITIMI INC. 242 Rangeline Road Longwood Florida 32750

READY WIRELESS, INC. 242 Rangeline Road Longwood Florida 32750

TING INC. 242 Rangeline Road Longwood Florida 32750

PURETALK HOLDINGS, LLC 242 Rangeline Road Longwood Florida 32750 THINKING PHONE NETWORKS, INC. 242 Rangeline Road Longwood Florida 32750

MJ2IP LLC dba CITY HOSTED SOLUTIONS 242 Rangeline Road Longwood Florida 32750

NEWVOICEMEDIA US, INC. 242 Rangeline Road Longwood Florida 32750

ONE VOICE COMMUNICATIONS, INC. 242 Rangeline Road Longwood Florida 32750

GO SOLO TECHNOLOGIES OF FLORIDA ONE, INC. 242 Rangeline Road Longwood Florida 32750

DISTRIBUTED COMPUTING, INC. dba TEN4PBX.COM 242 Rangeline Road Longwood Florida 32750

Intellicall Operator Services, Inc. 242 Rangeline Rd. Longwood Florida 32750

INTERNATIONAL TELECOM, LTD 242 Rangeline Road Longwood Florida 32780

FLASH WIRELESS, LLC PO Drawer 200 Winter Park Florida 32790

CINTEX WIRELESS PO Drawer 200 Winter Park Florida 32790

Jennifer DePinto ADVANTAGE TELECOMMUNICATIONS CORP. 3001 Aloma Avenue, Suite 304 Winter Park Florida 32792

Reduced Rate Long Distance, LLC 1800 Rembrooke Dr., Ste. 300 Orlando Florida 32810

VOXBEAM TELECOMMUNICATIONS, INC.
6314 Kingspointe Pkwy., Ste. 1
Orlando Florida 32819

Q Link Wireless, LLC 499 E. Sheridan St., Ste. 400 Dania Florida 33004 ICOMMERCE SERVICES, INC. dba GYMPHONE 242 Rangeline Road Longwood Florida 32750

Wholesale Carrier Services, Inc. 242 Rangeline Road Longwood Florida 32750

AFFILIATED TECHNOLOGY 842.Battgelstellecad Longwood Florida 32750

SIMPLEVOIP LLC 242 Rangeline Road Longwood Florida 32750

First Choice Technology, Inc. 903 Lake Lilly Dr. - A125 Maitland Florida 32751

ACCESS MEDIA HOLDINGS, LLC PO Drawer 200 Winter Park Florida 32790

INTERFACE SECURITY SYSTEMS P.O. Drawer 200 Winter Park Florida 32790

Talk America Services, LLC PO Drawer 200 Winter Park Florida 32790-0200

Advantage Telecommunications, Corp. 3001 Aloma Ave., Ste. 304 Winter Park Florida 32792

VOXBEAM TELECOMMUNICATIONS, Itha.MAGIC TELECOM
6314 Kingspointe Pkwy., Ste. 1
Orlando Florida 32819

NET ONE INTERNATIONAL, INC. 1969 S. Alafaya Trail, Suite 324 Orlando Florida 32828

Telmax USA, L.L.C. 3350 SW 148th St., Ste. 400 Miramar Florida 33027

Commercial Pay Phones, LLC 8510 NW 56th St. Miami Florida 33166

TOLY DIGITAL NETWORKS INC. 1005 W. Indiantown Rd., Ste. 201 Jupiter Florida 33458

NetWolves Network Services, LLC 4710 Eisenhower Boulevard, Suite E8 Tampa Florida 33634 Wholesale Carrier Services, Inc. 12350 NW 39th Street Coral Springs Florida 33067

YMax Communications Corp. P.O. Box 6785 West Palm Beach Florida 33405

Go Solo Technologies, Inc. 5410 Mariner St. - 175 Tampa Florida 33609

Tower Cloud, Inc 9501 International Court North St. Petersburg Florida 33716

Transworld Network, Corp. 255 Pine Ave. N. Oldsmar Florida 34677

Vincent Petrescu NECC TELECOM, INC. 4969 US Highway 42, Suite 2700 Louisville Kentucky 40222

NECC Telecom, Inc. 4969 US Hwy 42 - 2700 Louisville Kentucky 40222

I- WIRELESS 1 Levee Way, Suite 3104 Newport Kentucky 41071

Broadvox-CLEC, LLC 75 Erieview Plaza, Suite 400 Cleveland Ohio 44114

DCT Telecom Group, Inc. 27877 Clemens Rd. Westlake Ohio 44145

First Communications, LLC 3340 W. Market St Akron Ohio 44333

Cincinnati Bell Any Distance, Inc. 221 E. Fourth St., Ste. 103-1170 Cincinnati Ohio 45202

EVOLVE BUSINESS SOLUTIONS, LLC 221 East Fourth Street, Room 103-1070 Cincinnati Ohio 45202

Multiline Long Distance, Inc. 8044 Montgomery Rd. - 700 Cincinnati Ohio 45236

Telecare, Inc. 176 W. Logan St. - 232 Noblesville Indiana 46060 LDC Telecommunications, Inc. 2451 McMullen Booth Road. - 200 Clearwater Florida 33759

Talton Communications, Inc. 910 Ravenwood Dr. Selma Alabama 36701

Pulse Telecom LLC 4969 US Hwy 42, Ste. 2700 Louisville Kentucky 40222

National Directory Assistance, LLC 12700 Townepark Way Louisville Kentucky 40243

Velocity The Greatest Phone Company E∳80 Spring Meadows Dr. W. Holland Ohio 43528

Ryan Tackett BROADVOX-CLEC, LLC 75 Erieview Plaza, Suite 400 Cleveland Ohio 44114

Easton Telecom Services, LLC Summit II - Unit A 3046 Brecksville Rd. Richfield Ohio 44286

American Telecommunications

\$98663944e Rd. NW #A

Canton Ohio 44718

Kurt Boehm BOEHM, KURTZ & LOWRY 36 E. Seventh St. Suite 1510 Cincinnati Ohio 45202

Multiline Long Distance, Inc. 8044 Montgomery Rd., Ste. 700 Cincinnati Ohio 45236

PNG Telecommunications, Inc. 8805 Governor's Hill Dr. Cincinnati Ohio 45249

BullsEye Telecom, Inc. 25925 Telegraph Rd., Ste. 210 Southfield Michigan 48033

Bill McCabe PICACHO PEAK WATER COMPANY 28784 Stonehenge Drive Chesterfield Michigan 48047

LCR Telecommunications, LLC 100 W. Big Beaver Rd., Ste. 200 Troy Michigan 48084

American Cyber Corporation 107 W. Michigan, 4th Floor Kalamazoo Michigan 49007 Picacho Peak Water Company 28784 Stonehenge Dr. Chesterfield Michigan 48047

Nationwide Long Distance Service, Inc. 2000 Town Center, Ste. 1900 Southfield Michigan 48075

Long Distance Consolidated Billing Co. 4010 W. Walton Blvd. Ste. B Waterford Michigan 48329

Eric Blackford ALLIANCE GLOBAL NETWORKS,LLC 107 West Michagan Avenue, 4th Floor Kalamazoo Michigan 49007

CTC Communications Corp. 2851 Charlevoix Dr. SE, Ste. 209 Grand Rapids Michigan 49546

EarthLink Business LLC 2851 Charlevoix Dr. SE, Ste 209 Grand Rapids Michigan 49546

Telespan Communications, Inc. 5925 E. P. True Pkwy., Ste. 7 West Des Moines Iowa 50266

Donald Steven McAdams dba McAdams Water Company 10434 230th St. Delta Iowa 52550-8545

TDS Long Distance Corporation 525 Junction Rd. Madison Wisconsin 53717

Arizona Telephone Company 525 Junction Rd. Madison Wisconsin 53717

Donna Heaston ELECTRIC LIGHTWAVE, LLC 6160 Golden Hills Drive Golden Valley Minnesota 55416

Onvoy, LLC 10300 Sixth Ave. North Plymouth Minnesota 55431

CfL, L.L.C. 725 N. Derby Ln. North Sioux City South Dakota 57049

Integrated Services, Inc. 5 Revere Dr., One Northbrook Place Northbrook Illinois 60062-1550

ExteNet Systems, Inc. 3030 Warrenville Rd., Ste. 340 Lisle Illinois 60532 Rebecca W West BUSINESS TELECOM, LLC 2851 Charlevoix Drive SE, Suite 209 Grand Rapids Michigan 49546

Deltacom, Inc. dba EARTHLINK BUSINESS 2851 Charlevoix Dr. SE, Ste. 209 Grand Rapids Michigan 49546

Business Telecom, Inc. dba EarthLink Business 2851 Charlevoix Dr., SE, Ste. 209 Grand Rapids Michigan 49546

Steve McAdams MCADAMS WATER COMPANY 10434 230th Street Delta lowa 52550

TCO Network, Inc. 13400 Bishops Lane - 295 Brooksfield Wisconsin 53005

TDS Long Distance 525 Junction Rd. Madison Wisconsin 53717

LoTel dba Coordinated Billing Services 4946 Devonshire Circle Shorewood Minnesota 55331

POPP.com Inc. 620 Mendelssohn Ave. N. Golden Valley Minnesota 55427

Onvoy, LLC dba Onvoy Voice Services 10300 6th Ave. N Plymouth Minnesota 55441

Integrated Services, Inc. 5 Revere Drive One Northbrook Place, Ste. 101A Northbrook Illinois 60062

BCE Nexxia Corporation 1821 Walden Office Square, Ste. 400 Schaumburg Illinois 60173

Uni-Tel Communications Group, Inc. P.O. Box 1000 Naperville Illinois 60563

MHC Operating Limited Partnership dba The Sedona Venture Water Company c/o Equity Lifestyle Properties, Inc. 2 N. Riverside Plaza, Ste. 800 Chicago Illinois 60606

iNetworks Group, Inc. 125 S. Wacker - 2510 Chicago Illinois 60606 BCE Nexxia Corporation 138 East Randalph, Suite 500 Chicago Illinois 60601

Peerless Network of Arizona, LLC 222 S. Riverside Plaza, Ste. 2730 Chicago Illinois 60606

Ron Bunce Equity Lifestyle Properties, inc. Two North Riverside Plaza, Suite 800 Chicago Illinois 60606

Access One, Inc. 820 W. Jackson Blvd., 6th Floor Chicago Illinois 60607

Airus, Inc. 840 S. Canal St., 7th Floor Chicago Illinois 60607

Neutral Tandem-Arizona, LLC 550 W. Adams St. - 900 Chicago Illinois 60661

CAMPUS COMMUNICATIONS GROUP, INC. 206 N. Randolph St., Ste. 200 Champaign Illinois 61824

Mercury Voice and Data, LLC dba Suddenlink Communications 520 Maryville Centre Dr., Ste. 300 St. Louis Missouri 63141

Cbeyond Communications, LLC 2323 Grand Boulevard, Suite 925 Kansas City Missouri 64108

Unite Private Networks, LLC 7200 NW 86th St., Ste. M Kansas City Missouri 64153

X5 OPCO, LLC 8675 W. 96th St., Suite 220 Overland Park Kansas 66212

GOOGLE NORTH AMERICA INC. dba PROJECT FI BY GOOGLE 8675 W. 96th St., Ste. 220 Overland Park Kansas 66212

ICORE NETWORKS, INC. 8675 W. 96th Street, Suite 220 Overland Park Kansas 66212

WANRACK LLC 25656 W. 97th St. Lenexa Kansas 66227 Julie M. Oost AIRUS, INC.; PEERLESS NETWORK OF ARIZONA, LLC 840 S. Canai, 7th Fioor Chicago Illinois 60607

Access One, Inc. 820 W. Jackson Blvd., Ste. 650 Chicago Illinois 60607

Neutral Tandem- Arizona, LLC 550 W. Adams St. - 900 Chicago Illinois 60661

Stratus Networks, Inc. 4700 N. Prosper Rd. Peoria Heights Illinois 61616

CenturyLink Public Communications 1120 CenturyLink Dr., MS: 2NW768 Monroe Louisiana 61824

Unite Private Networks, LLC 120 South Stewart Road Liberty Missouri 64068

Ionex Communications North, Inc. 2323 Grand Boulevard, Sulte 925 Kansas City Missouri 64108

GARMIN USA, INC. 1200 E. 151st St. Olathe Kansas 66062

CLEARFLY COMMUNICATIONS 8675 W. 96th St., Suite 220 Overland Park Kansas 66212

TRUPHONE INC. 8675 W. 96th St., Ste. 220 Overland Park Kansas 66212

USA DIGITAL COMMUNICATIONS, \$675 W. 96th Street, Suite 220 Overland Park Kansas 66212

SPRINT SPECTRUM L.P. (SPRINT 9595) Sprint Parkway
MS: KSOPHT0101-Z2400
Overland Park Kansas 66251

WiMacTel, Inc 13515 | Circle Omaha Nebraska 68137

Budget Prepay, Inc. 1325 Barksdale Blvd. - 200 Bossier City Louisiana 71111 Sprint Communications Company, L.P. 6391 Sprint Parkway MS: Z2400 Overland Park Kansas 66251

Budget Prepay, Inc. dba Budget Phone 1325 Barksdale Blvd., Ste 200 Boissier City Louisiana 71111

CenturyLink Communications LLC 100 CenturyLink Dr. Monroe Louisiana 71203

Talk America Services, LLC 10802 Executive Center Dr., Benton Bldg, Ste. 300 Little Rock Arkansas 72211

Cesar Caballero Windstream 4001 North Rodney Parham Road Little Rock Alaska 72212

Paetec Communications, Inc. 4001 N. Rodney Parham Rd. Little Rock Arizona 72212

Securus Technologies, Inc. 14651 Dallas Pkwy Ste. 600 Dallas Texas 72254

ANPI Business, LLC P. O. Box 720128 Oklahoma City Oklahoma 73172

Telecom North America Inc. PO Box 720128 Oklahoma City Oklahoma 73172-0128

THRESHOLD COMMUNICATIONS, INC.
PO Box 720128
Oklahoma City Oklahoma 73172-0218

Enhanced Communications Group, LLC PO Box 936 Bartlesville Oklahoma 74005

MCI Communications Services, Inc. 600 Hidden Ridge, E02G205 Irving Texas 75038

Americatel Corporation 433 E. Las Colinas Blvd., Ste. 500 Irving Texas 75039

AMERICAN MESSAGING SERVICES, LLC 1720 Lakepointe Dr., Suite 100 Lewisville Texas 75057 Qwest Corporation 100 CenturyLink Dr. Monroe Louisiana 71203 Norm.curtright@centurylink.com Reed.peterson@centurylink.com Consented to Service by Email

McLeodUSA Telecommunications 移由心格長刊氏氏 Business Services 4001 N. Rodney Parham Rd. Little Rock Arkansas 72212

Talk America, Inc. 4001 N. Rodney Parham Rd. Little Rock Arkansas 72212

Windstream Communications, Inc. 4001 Rodney Parham Rd. Little Rock Arkansas 72212

NETWORK INNOVATIONS, INC. PO Box 720128 Oklahoma City Oklahoma 73172

Judith A. Riley ANPI BUSINESS, LLC PO Box 720128 Oklahoma City Oklahoma 73172-0128

Mosaic Networx LLC PO Box 720128 Oklahoma City Oklahoma 73172-0128

Enhanced Communications Group, LLC 312 SE Delaware Avenue Bartlesville Oklahoma 74005

Verizon Select Services, Inc. 600 Hidden Ridge, HQE01G44 Irving Texas 75038

Matrix Telecom Inc 433 E. Las Colinas Blvd., Ste. 500 Irving Texas 75039

Matrix Telecom, Inc. 433 Las Colinas Blvd. E, Ste. 500 Irving Texas 75039-5658

METROPCS OF CALIFORNIA, LLC 2250 Lakeside Blvd. Richardson Texas 75082

Hypercube Telecom, LLC 3200 W. Pleasant Run Rd. - 300 Lancaster Texas 75146

Sage Telecom Communications, LLC 10440 North Central Expressway, Suite 700 Dallas Texas 75231 WEST TELECOM SERVICES LLC 3200 W. Pleasant Run Rd., Ste. 300 Lancaster Texas 75146 Ksturner@west.com

Consented to Service by Email

MAGNA5, LLC fka S5OPCO, LLC 2828 N. Harwood St., Ste. 1700 Dallas Texas 75201

Telscape Communications, Inc. 10440 N. Central Expressway - 700 Dallas Texas 75231

NetworkIP, LLC 119 W. Tyler St., Ste. 100 Longview Texas 75601

Network Communications International Corp. dba 1800Call4LEss 607 E. Whaley St. Longview Texas 75601

Mercury Voice and Data, LLC 311 NNW Loop 323 Tyler Texas 75702

BN Leasing Corporation dba Aubrey Water Company PO Box 961050 Fort Worth Texas 76161

NEW CINGULAR WIRELESS PCS, INC. 1010 N. St. Mary's, 9th Floor San Antonio Texas 78215

SCOTT FERGUSON dba CEN-TEX PAY TELEPHONE CO., INC. 101 Sterling Browning San Antonio Texas 78232

Operator Service Company, LLC 6010 Exchange Pkwy San Antonio Texas 78238

Westel, Inc. 12015 Park Thirty Five Circle, Ste. 1208 Austin Texas 78753-1811

NTS Communications Inc 1220 Broadway Lubbock Texas 79401

Transtelco Inc. 500 W. Overland Ave., ste. 310 El Paso Texas 79901 Encompass Communications, LLC 119 W. Tyler St. - 286 Longview Texas 75601

Network Communications International 606cE. Magrill St. Longview Texas 75601

Network Operator Services, Inc. PO Box 3529 Longview Texas 75606

Blaine Bilderback P.O. Box 961050 Ft. Worth Texas 76161

SBC Long Distance, LLC 1010 N. St. Mary's Rm. 13-21 San Antonio Texas 78215

Inmate Calling Solutions, LLC Attn: Ken Dawson 2200 Danbury San Antonio Texas 78217

SCOTT FERGUSON 101 Sterling Browning San Antonio Texas 78232

TeleQuality Communications, Inc. 21232 Gathering Oaks, Suite 107 San Antonio Texas 78260

NTS Communications, Inc. 1220 Broadway Lubbock Texas 79401

FLAT WEST WIRELESS, LLC 5225 S. Loop 289, Suite 128 Lubbock Texas 79424

Telemanagement Systems, Inc. 8135 South Algonquian Circle Aurora Colorado 80016

WilTel Communications, LLC 1025 Eldorado Blvd. Broomfield Colorado 80021

Level 3 Communications, LLC 1025 Eldorado Blvd. Broomfield Colorado 80021

Global Crossing Local Services, Inc. 1025 Eldorado Blvd. Broomfield Colorado 80021

Comcast Phone of Arizona, LLC 183 Inverness Drive West Englewood California 80112 Nancy McCarty BROADWING COMMUNICATIONS, LLC 1025 Eldorado Boulevard Broomfield Colorado 80021

Level 3 Telecom of Arizona, LLC 1025 Eldorado Blvd. Broomfield Colorado 80021

Global Crossing Telecommunications, Inc. 1025 Eldorado Blvd. Broomfield Colorado 80021

Broadwing Communications, LLC 1025 Eldorado Blvd. Broomfield Colorado 80021

dishNet Wireline, LLC 9601 South Meridian Boulevard Englewood Colorado 80112

dishNet Wireline, LLC Attn: Tax Dept. – K. Mahurin PO Box 6623 Englewood Colorado 80155

Business Network Long Distance, Inc. 1400 Sixteenth Street, Ste. 400 Denver Colorado 80202

Bensch Ranch Utilities, LLC 7581 E. Academy Blbd., Ste. 229 Denver Colorado 80230

Payson Water Co., Inc. 7581 E. Academy Blvd., Ste. 229 Denver Colorado 80230

Navajo Water Co., Inc. 7581 E. Academy Blvd. Ste. 229 Denver Colorado 80230

Coronado Utilities, Inc. 7581 E. Academy Blvd., Ste. 229 Denver Colorado 80230

Pine Meadows Utilities, LLC 7581 E. Academy Blvd., Ste. 229 Denver Colorado 80230

Intrado Communications, Inc. 1601 Dry Creek Dr. Longmont Colorado 80503

Midvale Telephone Exchange, Inc. P.O. Box 7 2205 Keithley Creek Road Midvale Idaho 83645 TW Telecom of Arizona, LLC 10475 Park Meadows Dr. Littleton Colorado 80124

Zayo Group LLC 1621 18th St., Ste. 100 Denver Colorado 80202

RELIANCE GLOBALCOM SERVICES, MOO S. Colorado Blvd., Ste. 2-130 Denver Colorado 80222

Jason Williamson PIVOTAL COMPANIES 7581 East Academy Blvd. Denver Colorado 80230

Rainbow Parks, Inc. dba Escapees at North Ranch 7581 E. Academy Blvd., Ste. 229 Denver Colorado 80230

Tonto Basin Water Co., Inc. 7581 E. Academy Blvd., Ste. 229 Denver Colorado 80230

The Links at Coyote Wash Utilities, LLC 7581 E. Academy Blvd., Ste. 229 Denver Colorado 80230

Verde Santa Fe Wastewater Company, FGB1 E Academy Blvd., Ste. 229
Denver Colorado 80230

Central Telecom Long Distance, Inc. 102 S. Tejohn Sreet, 11th Floor Colorado Springs Colorado 80903

Rural Network Services, Inc. PO Box 7 Midvale Idaho 83645

Midvale Telephone Company, Inc. 2205 Keithley Circle Dr. Midvale Idaho 83645

inContact, Inc. dba UCN, Inc. 75 W. Towne Ridge Parkway, Tower 1 Sandy Utah 84070

Jive Communications Inc 3214 North University Avenue, Suite 610 Provo Utah 84604

South Central Utah Telephone Assoc, RØ. Box 555 45 N. 100 West Escalante Utah 84726 John Stuart MIDVALE TELEPHONE COMPANY 2205 Keithley Creek Road Midvale Idaho 83645

Jive Communications Inc 1275 W. 1600 N., Ste. 100 Orem Utah 84057

CCI NETWORK SERVICES, LLC 155 North 400 West Suite 100 Salt Lake City Utah 84103

Dixie-Escalante Rural Electric Association, Inc. 71 E. Highway 56 Beryl Utah 84714-5197

Garkane Energy Cooperative, Inc. P.O. Box 465 Loa Utah 84747

Joan S. Burke LAW OFFICES OF JOAN S. BURKE, P.C 1650 N. First Ave. Phoenix Arizona 85003

Timothy M. Hogan
ARIZONA CENTER FOR LAW IN THE PUBLIC
INTERST
514 W. Roosevelt St.
Phoenix Arizona 85003

Albert H. Acken One N. Central Ave Ste 1200 Phoenix Arizona 85004

Cynthia Zwick
ARIZONA COMMUNITY ACTION ASSOCIATION
2700 N. Third St. - 3040
Phoenix Arizona 85004

Jim West ACME WATER, LLC 365 East Coronado Road, Suite 200 Phoenix Arizona 85004

Timothy J. Sabo SNELL & WILMER, LLP One Arizona Center 400 East Van Buren, 19th Floor Phoenix Arizona 85004

Jason Moyes
MOYES SELLERS & HENDRICKS
1850 North Central, Suite 1100
Phoenix Arizona 85004

Nicholas J. Enoch LUBIN & ENOCH, PC 349 N. Fourth Ave. Phoenix Arizona 85003

Richard Gayer 526 W. Wilshire Dr. Phoenix Arizona 85003

Cynthia S. Campbell 200 W. Washington, Ste. 1300 Phoenix Arizona 85003-1611

Steve Wene MOYES SELLERS & HENDRICKS, LTD 1850 N. Central Ave, 1100 Phoenix Arizona 85004

Jay I. Moyes MOYES SELLERS & HENDRICKS, LTD 1850 N. Central Ave. - 1100 Phoenix Arizona 85004

Thomas H. Campbell LEWIS ROCA ROTHGERBER, LLP 201 East Washington Street, Suite 1200 Phoenix Arizona 85004

Michael Patten SNELL & WILMER, LLP One Arizona Center 400 East Van Buren Street, Suite 1900 Phoenix Arizona 85004

Steven Hirsch QUARLES & BRADY, LLP Two North Central Avenue, Suite 2200 One Renaissance Square Phoenix Arizona 85004

Andy Kvesic
ARIZONA CORPORATION COMMISSION
Director- Legal Division
1200 West Washington
Phoenix Arizona 85007
LegalDiv@azcc.gov
utildivservicebyemail@azcc.gov
Consented to Service by Email

Daniel Pozefsky RUCO 1110 West Washington, Suite 220 Phoenix Arizona 85007

Sandy Sutton WIFA 100 N. 15th Ave, Suite 103 Phoenix Arizona 85007-2624

Anthony Wanger IO DATA CENTERS, LLC 615 N. 48th St Phoenix Arizona 85008 Ray L. Jones, PE WUAA 916 West Adams, Suite 3 Phoenix Arizona 85007

Greg Patterson MUNGER CHADWICK 916 W. Adams Suite 3 Phoenix Arizona 85007

Elijah O. Abinah ARIZONA CORPORATION COMMISSION Director - Utilities Division 1200 West Washington Street Phoenix Arizona 85007

Dwight Nodes
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix Arizona 85007-2927

Alan Kierman IO DATA CENTERS, LLC 615 N. 48th St Phoenix Arizona 85008

Lagoon Estates Water Company, Inc. 2600 N. 44th St., Ste. 203 Phoenix Arizona 85008

P. Stanley Reed WICKENBURG RANCH WATER, LLC PO Box 16460 Phoenix Arizona 85011

Giancarlo Estrada KAMPER ESTRADA, LLP 3030 N. 3rd Street, Suite 770 Phoenix Arizona 85012

Qwest Corporation dba CENTURYLINK QC 20 E. Thomas Rd., First Floor Phoenix Arizona 85012 Norm.curtright@centurylink.com Reed.peterson@centurylink.com

Consented to Service by Email

Leonard Mardian
DOUBLE DIAMOND UTILITIES, INC.
3636 North Central Avenue, Suite 700
Phoenix Arizona 85012

Double Diamond Utilities, Inc. 3636 N. Central Ave., Ste. 700 Phoenix Arizona 85012

Hillcrest Water Company 915 E. Bethany Home Road Phoenix Arizona 85014 Stanley Miller LAGOON ESTATES WATER COMPANY 2600 North 44th Street, Suite 203 Phoenix Arizona 85008

Brittany L. DeLorenzo Corporate Counsel IO DATA CENTERS, LLC 615 N. 48th Street Phoenix Arizona 85008

Susan Stroud HIGH COUNTRY PINES WATER COMPANY, INC. 6033 North 4th Place Phoenix Arizona 85012

High County Pines Water Company, €033 N. 4th Place Phoenix Arizona 85012

Paul Walker INSIGHT CONSULTING, LLC 330 East Thomas Road Phoenix Arizona 85012

Meghan H. Grabel OSBORN MALEDON, PA 2929 N. Central Avenue Suite 2100 Phoenix Arizona 85012 mgrabel@omlaw.com kruht@omlaw.com gyaquinto@arizonaaic.org

Consented to Service by Email

Barbara Dunlap Hillcrest Water Company 915 E. Bethany Home Rd. Phoenix Arizona 85014

Scott S. Wakefield HIENTON & CURRY, PLLC 5045 N 12th Street, Suite 110 Phoenix Arizona 85014-3302

Charles Civer LAKE PLEASANT SEWER COMPANY 2390 East Camelback Road, Suite 310 Phoenix Arizona 85016

Patrick J. Black FENNEMORE CRAIG,P.C. 2394 E. Camelback Rd, Ste 600 Phoenix Arizona 85016

Garry D Hays LAW OFFICES OF GARRY D. HAYS, PC 2198 East Camelback Road, Suite 305 Phoenix Arizona 85016

Valley View Water Company, Inc. 2930 E. Elm St Phoenix Arizona 85016 Golden Corridor Water Company c/o Arizona Water Company 3805 North Black Canyon Highway Phoenix Arizona 85015

Robert J. Metli MUNGER CHADWICK, PLC 2398 E. Camelback Rd., Ste. 240 Phoenix Arizona 85016

Jeffrey Crockett CROCKETT LAW GROUP, PLLC 2198 E. Camelback Rd., Suite 305 Phoenix Arizona 85016

Charles Keating VALLEY VIEW WATER COMPANY 2930 East Elm Street Phoenix Arizona 85016

Lake Pleasant Water Company 2390 E. Camelback Rd., Ste. 310 Phoenix Arizona 85016

Diversified Water Utilities, Inc. 4700 E. Thomas Rd., Ste. 203 Phoenix Arizona 85018

Candice Adair Adair Communications 4218 W. Flower St. Phoenix Arizona 85019-4135

Jay L. Shapiro SHAPIRO LAW FIRM, P.C 1819 E. Morten Avenue, Suite 280 Phoenix Arizona 85020

CityNet Arizona, LLC 2338 W. Royal Palm Rd., Ste. J Phoenix Arizona 85021

Global Water - Picacho Cove Water Company, Inc. c/o Global Water Resources, Inc. 21410 N. 19th Ave., Ste. 220 Phoenix Arizona 85027

Empirita Water Company, L.L.C. 2850 E. Skyline Dr., Ste. Tucson Arizona 85027

Hassayampa Utility Company, Inc. c/o Global Water 21410 N 19th Ave., Ste 220 Phoenix Arizona 85027

Water Utility of Northern Scottsdale, Inc. c/o Global Water Resources, Inc. 21410 N. 19th Ave., Ste. 220 Phoenix Arizona 85027

Jennifer A. Cranston GALLAGHER & KENNEDY, P.A 2575 E. Camelback Rd. Suite 1100 Phoenix Arizona 85016-9225

Great Prairie Oasis, LLC dba Sunland Water Company 4523 E. Palo Verde Dr. Phoenix Arizona 85018

John William Moore, Jr. MOORE BENHAM & BEAVER, PLC 7321 N. 16th Street Phoenix Arizona 85020

Michele Van Quathem LAW OFFICES OF MICHELE VAN QUATHEM, PLLC 7600 N 15th St, Suite 150-30 Phoenix Arizona 85020 mvq@mvqlaw.com

Consented to Service by Email

Cox Arizona Telecom, LLC 1550 W. Deer Valley Rd. Phoenix Arizona 85027

Global Water - Santa Cruz Water Corpland Water Resources, Inc. 21410 N. 19th Ave., Ste. 220 Phoenix Arizona 85027

Balterra Sewer Corp. c/o Global Water 21410 N. 19th Ave., Ste 220 Phoenix Arizona 85027

Water Utility of Greater Tonopah, Inc. c/o Global Water Resources, Inc. 21410 N. 19th Ave., Ste 220 Phoenix Arizona 85027

Willow Valley Water Co., Inc. c/o Global Water Resources, Inc. 21410 N. 19th Ave., Ste. 220 Phoenix Arizona 85027

Global Water - Palo Verde Utilities Corplanal Water 21410 N 19th Ave., Ste 220 Phoenix Arizona 85027

Accipiter Communications Inc. 2238 W. Lone Cactus Dr., Ste. 100 Phoenix Arizona 85027

Sheryl L. Hubbard EPCOR WATER ARIZONA, INC. 2355 W. Pinnacle Peak Rd. - 300 Phoenix Arizona 85027 Tom Harris
ARIZONA SOLAR ENERGY INDUSTRIES
ASSOCIATION
2122 W. Lone Cactus Dr. Suite 2
Phoenix Arizona 85027

Global Water - Picacho Cove Utilities Company c/o Global Water 21410 N 19th Ave., Ste 220 Phoenix Arizona 85027

EPCOR Water Arizona, Inc. 2355 W. Pinnacle Peak Rd., Ste. 300 Phoenix Arizona 85027

Ron Fleming GLOBAL WATER RESOURCES, INC. 21410 N. 19th Ave., Suite 220 Phoenix Arizona 85027

XO Communications Services, Inc. 3930 East Watkins Street, Suite 200 Phoenix Arizona 85034

Arizona Water Company P.O. Box 29006 Phoenix Arizona 85038

E. Robert Spear ARIZONA WATER COMPANY Post Office Box 29006 Phoenix Arizona 85038-9006

IMC/ Information Management Consultants 1630 E. Briarwood Terrace Phoenix Arizona 85048

Thomas A Loquvam
PINNACLE WEST CAPITAL CORPORATION
P.O. Box 53999, MS 8695
Phoenix Arizona 85072

Peeples Valley Water Company PO Box 88006 Phoenix Arizona 85080

Phil Auernheimer WINCHESTER WATER COMPANY, LLC PO Box 86453 Phoenix Arizona 85080

Winchester Water Company, L.L.C. PO Box 86453 Phoenix Arizona 85080

Ashcreek Water Company PO Box 86205 Phoenix Arizona 85080 Craig A. Marks CRAIG A. MARKS, PLC 10645 N. Tatum Blvd. Suite 200-676 Phoenix Arizona 85028

William M. Garfield ARIZONA WATER COMAPNY P.O. Box 29006 Phoenix Arizona 85038

Mormon Lake Water Co. PO Box 29041 Phoenix Arizona 85038

Ann-Marie Anderson WRIGHT WELKER & PAUOLE, PLC 10429 South 51st Street, Suite 285 Phoenix Arizona 85044

Kevin Knutson 10807 North Sundown Dr. Scottsdale Arizona 85060

Arizona Public Service Company PO Box 53999 Station 9708 Phoenix Arizona 85072-3999

Richard L. Darnall
PEEPLES VALLEY WATER COMPANY
PO Box 88006
Phoenix Arizona 85080

Carol Gonzalez GONZALEZ UTILITY SERVICES, LLC PO Box 86205 Phoenix Arizona 85080

Lyn Lee Water Company PO Box 86205 Phoenix Arizona 85080

Robert J. McKenzie 41633 N. Panther Creek Trail Anthem Arizona 85086

Kraus Investment LC dba Shangri-La Ranch/Waterworks 44444 N. Shangri-La Lane New River Arizona 85087

Oak Creek Utility Corporation PO Box 1020 Apache Junction Arizona 85117-4039

Casa Grande West Water Company 211 N. Florence St., Ste. 107 Casa Grande Arizona 85122

Sun Valley Farms Unit VI Water Co., 19698 E. Hashknife Draw Rd. Santan Valley Arizona 85140 Horst Kraus KRAUS INVESTMENTS L.C DBA SHANGRI-LA RANCH 44444 North Shangri La Lane New River Arizona 85087

Randy Sosin
Oak Creek Utility Corporation
PO Box 1020
Apache Junction Arizona 85117

Robert Gordon CASA GRANDE SOUTH WATER COMPANY 117 E. Second St. Casa Grande Arizona 85122

Jim L. Harris 3698 E. Hash Knife Draw Rd. San Tan Valley Arizona 85140

Ed Kile
PICACHO WATER IMPROVEMENT CORPORATION
6240 East Monitor
Picacho Arizona 85141

Utility Source, LLC 20525 E. Chandler Heights Rd. Queen Creek Arizona 85142-9500

Spring Branch Water Company, Inc. 1223 S. Clearview Ave., Ste. 103 Mesa Arizona 85209

Jim B. Combs 40 W. Baseline -112 Mesa Arizona 85210

William H. Johnston 6139 East Hermosa Vista Drive Mesa Arizona 85215

James C. Rea TONTO CREEK WATER COMPANY, LLC PO Box 13993 Mesa Arizona 85216

Turner Ranches Water & Sanitation Company PO Box 1020 Apache Junction Arizona 85217-1020

Michael Saunders Francisco Grande Utility Company 26000 Gila Bend Highway Casa Grande Arizona 85222

Casa Grande South Water Company 211 N. Florence St., Ste. 107 Casa Grande Arizona 85222 Lonnie C. McCleave UTILITY SOURCE, LLC 20525 E. Chandler Heights Rd. Queen Creek Arizona 85142

Mitel NetSolutions, Inc. 1146 N. Alma School Rd. Mesa Arizona 85201

Broc C. Hiatt 1223 S. Clearview Ave., Ste. 103 Mesa Arizona 85209

Jackson Springs Estates Home and Phase Byl Commerce Asster Pation
Mesa Arizona 85215

Tonto Creek Water Company LLC PO Box 13993 Mesa Arizona 85216

Judy Lopez Beardsley Water Company, Inc. PO Box 1020 Apache Junction Arizona 85217

Beardsley Water Company, Inc. c/o First National Management PO Box 1020 Apache Junction Arizona 85217-1020

Francisco Grande Utility Company 26000 Gila Bend Highway Casa Grande Arizona 85222

Gila Local Exchange Carrier dba Alluvion Communications Box 5020 7065 W. Allison Rd Chandler Arizona 85226

Dennis M. Fitzgibbons FITZGIBBONS LAW OFFICES, PLC P.O. Box 11208 Casa Grande Arizona 85230

THE I.T. WORKSHOP 890 W. Elliot Rd., Suite 110 Gilbert Arizona 85233

Mountain Pass Utility Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Santa Rosa Utility Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Pima Utility Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248 Gila Local Exchange Carrier Box 5015 7065 W. Allison Rd. Chandler Arizona 85226

CityNet Arizona, LLC 170 S. William Dillard Dr., Ste. 115 Gilbert Arizona 85233

Bidegain Water Company PO Box 538 Kearny Arizona 85237

Saddlebrooke Utility Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Picacho Sewer Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Santa Rosa Water Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Quail Creek Water Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Picacho Water Improvement Corporation 6240 E. Monitor Picacho Arizona 85248

Steve Soriano ROBSON COMPANIES 9532 E. Riggs Rd. Sun Lakes Arizona 85248

AVM-2005 LLC 6263 N. Scottsdale Rd., Ste. 265 Scottsdale Arizona 85250

Judith M. Dworkin 4250 N. Drinkwater Blvd., Fourth Floor Scottsdale Arizona 85251-3693

Andrew Miller 6401 E. Lincoln Drive Paradise Valley Arizona 85253

Joshua Valley Utility Company 6810 Horseshoe Rd Paradise Valley Arizona 85253

Patrick Quinn
QUINN AND ASSOCIATES, LLC
ARIZONA UTILITY RATEPAYER ALLIANCE
5521 E. Cholla St.
Scottsdale Arizona 85254

Lago Del Oro Water Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Picacho Water Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Ridgeview Utility Company 9532 E. Riggs Rd. Sun Lakes Arizona 85248

Norm Baker AVM-2005, LLC 6263 North Scottsdale Road, Suite 265 Scottsdale Arizona 85250

Court S. Rich ROSE LAW GROUP, PC 7144 E. Stetson Drive, Suite 300 Scottsdale Arizona 85251

John D. Ratliff 5219 N. Casa Blanca Dr., No. 55 Paradise Valley Arizona 85253

William F. Bennett Paradise Valley Country Club 7101 N. Tatum Boulevard Paradise Valley Arizona 85253

Southwest Environmental Utilities, LLC 5230 E. Shea Blvd., Ste. 200 Scottsdale Arizona 85254

Johnson Utilities, LLC 5230 E. Shea Blvd., Ste. 200 Scottsdale Arizona 85254

Thomas E. Stewart GRANITE CREEK POWER & GAS/GRANITE CREEK FARMS 5316 East Voltaire Avenue Scottsdale Arizona 85254-3643

Woodruff Water Company, Inc. 21020 N. Pima Rd. Scottsdale Arizona 85255

Jon P. Coulter WOODRUFF WATER COMPANY, INC. 21020 N. Pima Road Scottsdale Arizona 85255

Universal Telecom 10105 East Via Linda, Building 103 Suite 103-244 Scottsdale Arizona 85258

Telesphere Access, LLC 9237 E. Via de Ventura, Ste. 250 Scottsdale Arizona 85258 George H. Johnson JOHNSON UTILITIES, LLC 5230 E. Shea Blvd. - 200 Scottsdale Arizona 85254

Ray L. Jones, PE ARICOR Water Solutions LC 18835 North Thompson Peak Parkway, Suite 215 Scottsdale Arizona 85255

Woodruff Utility Company, Inc. 21020 N. Pima Rd. Scottsdale Arizona 85255

Re-Invent Telecom, LLC 10190 E. McKellips Rd. Scottsdale Arizona 85256

Oatman Water Company, LLC c/o Steve Anderson 9184 N. 81st St. Scottsdale Arizona 85258

Todd Brooke 10105 E. Via Linda, Bldg. 103 Ste. 103-244 Scottdale Arizona 85258

Steve Anderson 9184 N. 81st Street Scottsdale Arizona 85258-00000

ONTOP TECHNOLOGY CORP. 1145 E. Via Linda, Unit 2-348 Scottsdale Arizona 85259

Kevin Knutson dba Cryptic Communications 10807 North Sundown Dr. Scottsdale Arizona 85260

Rio Verde Utilities, Inc. 25609 N. Danny Lane Rio Verde Arizona 85263

CIO NOW, LLC PO Box 13241 Scottsdale Arizona 85267

Chaparral City Water Company 12021 N. Panorama Dr. Fountain Hills Arizona 85268

Michael Suggs STERLING WATER COMPANY 12438 North Saguaro Boulevard, Suite 114 Fountain Hills Arizona 85268

V. David Arthur White Hills Water Co., Inc. P.O. Box 30626 Mesa Arizona 85275 Broadband Dynamics, LLC 8757 E. Via De Commercio, 1st FL. Scottsdale Arizona 85258

Red Rock Telecommunications, LLC 10863 E. Onyx Ct. Scottsdale Arizona 85259

Paxx Telecom, LLC 14201 N. Hayden Rd., Ste.A3 Scottsdale Arizona 85260

Leap Frog Telecom, LLC dba Voce Telecom 8426 E. Shea Blvd. Scottsdaleaz Arizona 85260

James Thomson 25609 Danny Lane, Ste 1 Rio Verde Arizona 85263

Paxx Telecom, LLC PO Box 12637 Scottsdale Arizona 85267

Sterling Water Company 12438 N. Saguaro Blvd., Ste. 114 Fountain Hills Arizona 85268

White Hills Water Company, Inc. PO Box 30626 Mesa Arizona 85275

Don Ross BERNEIL WATER COMPANY PO Box 219 Tempe Arizona 85280

Berneil Water Company PO Box 219 Tempe Arizona 85280-0219

John Wallace 2210 South Priest Dr Tempe Arizona 85282

Jorge S Canaca 2210 S, Priest Drive Tempe Arizona 85282

White Mountain Water Company PO Box 24204 Tucson Arizona 85285

Valley Utilities Water Company, Inc. 6808 N. Dysart Rd., Ste. 112 Glendale Arizona 85307

Ajo Improvement Company P.O. Drawer 9 Ajo Arizona 85321 Cordes Lakes Water Company PO Box 219 Tempe Arizona 85280-0219

Crexendo Business Solutions, Inc. 1615 S. 52nd St. Tempe Arizona 85281

CVC CLEC, LLC 2922 S. Roosevelt St. Tempe Arizona 85282

Jon Cheney WHITE MOUNTAIN WATER COMPANY PO Box 24204 Tempe Arizona 85285

Ashline Group 14231 N. 51st Dr. Glendale Arizona 85306

Crown King Water Company, Inc. 4918 West Park View Ln. Glendale Arizona 85310

Litchfield Park Service Co. 12725 W. Indian School Rd., Ste. D101 Avondale Arizona 85323

Coldwater Canyon Water Company PO Box 637 Black Canyon City Arizona 85324

Doug Crowl GRANDVIEW WATER COMPANY, INC. 11632 South 194th Drive Buckeye Arizona 85326

Cibola Mutual Water Company RR2, Box 77 Cibola Arizona 85328

Dateland Public Service Co., Inc. PO Box 3011 Dateland Arizona 85333

Dennis Price EHRENBERG IMPROVEMENT ASSOCIATION PO Box 50 Ehrenberg Arizona 85334

Adaman Mutual Water Company 16251 W. Glendale Ave. Litchfield Park Arizona 85340

Robert Prince
TIERRA BUENA WATER COMPANY
12540 West Bethany Home Road
Litchfield Park Arizona 85340

Roger Wagner COLDWATER CANYON WATER COMPANY P.O. Box 637 Black Canyon City Arizona 85324

Clearwater Utilities Company, Inc. 20441 W. Cheyenne Rd. Buckeye Arizona 85326

JJ Guerin CLEARWATER UTILITIES CO. 20441 West Cheyenne Road Buckeye Arizona 85326

David Grundy CIBOLA MUTUAL WATER COMPANY, INC. R.R. 2 Box 77 5948 Levee Road Cibola Arizona 85328

Linda Stevens
DATELAND PUBLIC SERVICE CO, INC.
PO Box 3011
Dateland Arizona 85333

Ehrenberg Improvement Association PO Box 50 Ehrenberg Arizona 85334-0050

David Schofield Adaman Mutual Water Company 16251 West Glendale Ave. Litchfield Park Arizona 85340

Tierra Buena Water Company, Inc. 12540 W. Bethany Home Road Litchfield Park Arizona 85340

Debra Kilgore CIENEGA WATER COMPANY P.O. Box 3518 Parker Arizona 85344

Troy L. Scott HARRISBURG UTILITY COMPANY, INC. PO Box 905 Salome Arizona 85348

Harrisburg Utility Company, Inc. PO Box 905 Salome Arizona 85348

Gadsden Water Company, Inc. PO Box 519 Somerton Arizona 85350

Greg Eisert SUN CITY HOME OWNERS ASSOCIATION 10401 W. Coggins Drive Sun City Arizona 85351 Morristown Water Company P.O. Box 156 Morristown Arizona 85342

Cienega Water Company, Inc. 7804 Riverside Dr. Parker Arizona 85344

William R Farr dba Salome Water Company PO Box 550 Salome Arlzona 85348

Jimmy Deere GADSDEN SHORES WATER COMPANY, INC. PO Box 519 Somerton Arizona 85350

Jim Stark Sun City Home Owners Association 10401 West Coggins Drive Sun City Arizona 85351

Susan Haas EAGLETAIL WATER COMPANY, LLC P.O. Box 157 Tonopah Arizona 85354

Colleen Lowr MOHAWK UTILITY COMPANY PO Box 1348 Wellton Arizona 85356

Antelope Water Company PO Box 843 Wellton Arizona 85356

Michael A Glover Q MOUNTAIN MOBILE HOME PARK P.O. Box 4930 Quartzite Arizona 85359

Yarnell Water Improvement Association PO Box 727 Yarnell Arizona 85362

Q Mountain Water, Inc. c/o Bruce Jacobson 1334 S. 5th Ave. Yuma Arizona 85364

Laura Guth Martinez Lake Sewer Company 10430 North Martinez Lake Yuma Arizona 85365

Martinez Lake Sewer Company 10430 N. Martinez Lake Rd. Yuma Arizona 85365 Eagletail Water Company, LC PO Box 157 Tonopah Arizona 85354

Tristan Wright ANTELOPE WATER COMPANY PO Box 843 Wellton Arizona 85356

Mohawk Utility Company PO Box 1348 Wellton Arizona 85356

Q Mountain Mobile Home Park P.O. Box 4930 Quartzsite Arizona 85359

Stan Kephart YARNELL WATER IMPROVEMENT ASSSOCIATION PO Box 727 Yarnell Arizona 85362

Bruce Jacobson Q MOUNTAIN WATER INC. 1334 South 5th Avenue Yuma Arizona 85364

Sweetwater Creek Utilities, Inc. 4743 East 30th Place Yuma Arizona 85365

Shepard Water Company 10430 N. Martinez Lake Rd. Yuma Arizona 85365

Tacna Water Management Company 4743 E. 30th Place Yuma Arizona 85365

Rancheros Bonitos Water Co., LLC 4743 E. 30th Place Yuma Arizona 85365

Fisher's Landing Water and Sewer RorksxL22 88
Yuma Arizona 85365

Citrus Park Water Co., Inc. 4743 E. 30th Place Yuma Arizona 85365

Sun Leisure Estates Utilities Company, R∕O. Box 1074 Yuma Arizona 85366

Far West Water & Sewer, Inc. 13157 E. 44th St. Yuma Arizona 85367

Victoria Bonnet AGUILA WATER SERVICES, INC. PO Box 1086 Sun City Arizona 85372 Tierra Mesa Estates Water Co. 4743 E. 30th Place Yuma Arizona 85365

Green Acres Water Company 4743 E. 30th Place Yuma Arizona 85365

El Prado Water Company, Inc. 4743 E. 30th Place Yuma Arizona 85365

Charles Bush P.O. Box 72188 yuma Arizona 85365

Nancy . Miller SUNSTATE 4743 E. 30th Pl. Yuma Arizona 85366

Diana Crites SUN LEISURE ESTATES UTILITIES CO., INC. PO Box 1074 Yuma Arizona 85366

Paula Capestro FAR WEST WATER & SEWER, INC. 13157 E 44th Street Yuma Arizona 85367

Aguila Water Services, Inc. PO Box 1086 Sun City Arizona 85372

Karen D. Proctor 11716 W. Villa Chula Court Sun City Arizona 85375

W.R. Hansen President, Property Owners and Residents Assoc. 13815 W. Camino del Sol Sun City West Arizona 85375

Frederick G. Botha 23024 N. Giovota Drive Sun City West Arizona 85375

Regina Shanney-Saborsky c/o Corte Bella Country Club HOA 22155 North Mission Drive Sun City West Arizona 85375

Bob Fletcher NEW RIVER UTILITY COMPANY, INC. 7939 West Deer Valley Road Peoria Arizona 85382

West End Water Co. 9098 W. Pinnacle Peak Rd. Peoria Arizona 85383 Francis A. Noe CROSS RIVER HOMEOWNERS ASSOCIATION 11756 W. Daley Lane Sun City Arizona 85373

Albert E. Gervenack SUN CITY WEST PROPERTY OWNERS & RESIDENTS ASSOCIAT 13815 Camino Del Sol Sun City West Arizona 85375

Albert E. Gervenack 14751 W. Buttonwood Drive Sun City West Arizona 85375

Douglas Edwards 13517 W. Sola Drive Sun City West Arizona 85375

ADG TELECOM, LLC 13954 W. Waddell Rd., Suite 103-463 Surprise Arizona 85379

Steve Jennings AARP 16165 N. 83rd Ave., Ste 201 Peoria Arizona 85382

Sunrise Water Company 9098 W. Pinnacle Peak Rd. Peoria Arizona 85383

Woody's Enterprises, Ltd. 580 W. Wickenburg Way Wickenburg Arizona 85390

Ginny Lowe WOODY'S ENTERPRISES, LTD. DBA HO-TYE WATER COMPANY 580 W. Wickenburg Way Wickenburg Arizona 85390

Bella Vista Water Company, Inc. 12725 W. Indian School Rd., Ste. D101 Avondale Arizona 85392

Rio Rico Utilities, Inc. 12725 W. Indian School Rd. - D101 Avondale Arizona 85392

Entrada Del Oro Sewer Company 12725 W Indian School Rd., Ste. D101 Avondale Arizona 85392

Litchfield Park Service Co. 12725 W. Indian School Rd., Ste. D101 Avondale Arizona 85392

Forrest G. and Alice W. Wilkerson dba Verde Lee Water Co., Inc. PO Box 1322 Clifton Arizona 85533 Steven D. Campbell SUNRISE WATER CO. AND WEST END WATER CO. 9098 West Pinnacle Peak Road Peoria Arizona 85383

Dallas C. Grant, Jr. CABALLEROS WATER COMPANY, INC. 1551 South Vulture Mine Road Wickenburg Arizona 85390

Caballeros Water Company, Inc. 1551 S. Vulture Mine Rd. Wickenburg Arizona 85390

Matthew Garlick
LIBERTY WATER COMPANY
12725 W. Indian School Rd. Suite D-101
Avondale Arizona 85392

Gold Canyon Sewer Company 12725 W. Indian School Rd., Ste. D101 Avondale Arizona 85392

Black Mountain Sewer Corporation 12725 W. Indian School Rd., Ste. D101 Avondale Arizona 85392

Karen A. Samuel 247 S. Hill Street Globe Arizona 85501

Marla Wilkerson VERDE LEE WATER CO., INC PO Box 1322 Clifton Arizona 85533

Duncan Valley Electric Cooperative, Inc. Gas Division PO Box 440 Duncan Arizona 85534

Eden Water Company, Inc. 9488 N. Hot Springs Rd. Eden Arizona 85535

Ruel Rogers
THE MORENCI WATER AND ELECTRIC COMPANY
P.O. Box 68
Morenci Arizona 85540

Jeffrey T. Daniels
TONTO VILLAGE WATER CO., INC AND UTILITY
SYSTEMS,
173 South Blackfoot Road - Colcord Estates
HC 2 Box 164-H
Payson Arizona 85541

Alliant Gas, LLC 200 W. Longhorn Rd Payson Arizona 85541 Duncan Valley Electric Cooperative, Inc. P.O. Box 440 Duncan Arizona 85534

Sebrina Davis 9488 N Hot Springs Rd Eden Arizona 85535

Roy Archer MORENCI WATER AND ELECTRIC COMPANY AJO IMPROVEMENT COMPANY P.O. Box 68 Morenci Arizona 85540

The Morenci Water & Electric Company P.O. Box 68 Morenci Arizona 85540

Bonita Creek Land & Homeowner's A55@gt&ls Run Payson Arizona 85541

Utility Systems, LLC 173 S. Blackfoot Rd. Payson Arizona 85541

Ken Nagy BONITA CREEK LAND & HOMEOWNERS ASSOCIATION 251 Big Al's Run Payson Arizona 85541

Management Systems, LLC dba Jake's Corn Water System 211 W. Saddle Lane Payson Arizona 85541

Graham County Electric Cooperative, ℍ. Box Drawer B Pima Arizona 85543

Graham County Utilities, Inc. P.O. Drawer B Pima Arizona 85543

Ponderosa Water, L.L.C. 10106 W. FOssil Creek Rd. Strawberry Arizona 85544

Roosevelt Lake Resort, Inc. PO Box 695 Roosevelt Arizona 85545

Patricia C. Ferre P.O. Box 433 Payson Arizona 85547

Bevan Barney LOMA LINDA WATER COMPANY PO Box 967 Thatcher Arizona 85552 Tonto Village Water Company, Inc. 173 S. Blackfoot Rd. Payson Arizona 85541

Payson Arizona 8554

Kacy Parker dba Arroyo Water 211 W. Saddle Lane Payson Arizona 85541

Triplet Mountain Communications, Inc. P.O. Box 779
10 Telecom Ln. - 2
Peridot Arizona 85542

Kirk Gray GRAHAM COUNTY UTILITIES, INC. P.O. Drawer B Pima Arizona 85543

Graham County Utilities, Inc. Gas Division PO Drawer B Pima Arizona 85543

Michael Leach ROOSEVELT LAKE RESORT, INC. PO Box 695 Roosevelt Arizona 85545

Kohl's Ranch Water Company PO Box 206 Payson Arizona 85547

Evelyn R. Thorne KOHL'S RANCH WATER COMPANY, INC. PO Box 206 Payson Arizona 85547

Arivaca Townsite Cooperative Water Company, Inc. PO Box 398 Arivaca Arizona 85601

Arizona Electric Power Cooperative, Inc. P.O. Box 670 Benson Arizona 85602

C-D Oasis Water Company 1665 10th St. Douglas Arizona 85607

Vernon Cardwell C-D OASIS WATER COMPANY 1665 10th Street Douglas Arizona 85607

Parker Lakeview Estates Homeowners Association, Inc. HC1 Box 474 Elgin Arizona 85611 Patti Jent P.O. Box 967 Arivaca Arizona 85601

Willow Lakes Property Owners মুক্তি অধাটোট্ Inc. Benson Arizona 85602

Alfredo Rubio MONTE VISTA WATER CO., LLC 4762 North Rustler Place Douglas Arizona 85607

Monte Vista Water Co., LLC 4762 N. Rustler Place Douglas Arizona 85607

Gail Spain PARKER SPRINGS WATER COMPANY 7947 S. Coronado Trail HC1 Box 474 Elgin Arizona 85611

Heart Cab Co., Inc. dba Sulger Water Company c/o Amie Sulger, Vice PResident 2567 N. Calle Segundo Huachuca City Arizona 85616

Gary Brasher ROSE VALLEY WATER COMPANY, INC. PO Box 1444 Green Valley Arizona 85622

Rose Valley Water Company, Inc. PO Box 1444 Green Valley Arizona 85622-1444

Narvol D. Bales WAYWARD WINDS 5416 E. Hwy 181 Pearce Arizona 85625

Narvol D. Bales dba Sunizona Water Company 5416 E. Hwy 181 Pearce Arizona 85625

Farmers Water Company PO Box 7 Sahuarita Arizona 85629

Matthew Bailey FARMERS WATER COMPANY PO Box 7 Sahuarita Arizona 85629

Pueblo Del Sol Water Company 4226 Avenida Cochise, Ste. 13 Sierra Vista Arizona 85635 Amie Sulger HEART CAB CO., INC DBA SULGER WATER COMPANY #2 2567 North Calle Segundo Huachuca Arizona 85616 SulgerWater2@yahoo.com

Consented to Service by Email

Lawrence V. Robertson, Jr. 210 Continental Road, Suite 216A Green Valley Arizona 85622

Arturo R. Gabaldon, CPA - General Mgr. COMMUNITY WATER CO. OF GREEN VALLEY 1501 South La Canada Green Valley Arizona 85622

Community Water Company of Green Valley 1501 S. La Canada Green Valley Arizona 85622-1600

Bill Bradford dba Bradford Communications PO Box 702 Pearce Arizona 85625

Rincon Water Company HC #70, BOx 3601 Sahuarita Arizona 85629

Omar Mejia LAS QUINTAS SERENAS WATER COMPANY Post Office Box 68 Sahuarita Arizona 85629

Las Quintas Serenas Water Company PO Box 68 Sahuarita Arizona 85629

Rick Coffman PUEBLO DEL SOL WATER COMPANY 4226 Avenida Cochise Street, Suite 13 Sierra Vista Arizona 85635

Cloud Nine Water Company, Inc. 96 Bel Aire Place, Ste. 140 Sierra Vista Arizona 85635

Holiday Enterprises Incorporated dba Holiday Water Company P.O. Box 309 Tombstone Arizona 85638

Sulphur Springs Valley Electric Cooperative, Inc. 350 N. Haskell Ave. Willcox Arizona 85643 Andrew Stokes Cloud Nine Water Company, Inc. 96 Bel Aire Place, Suite 140 Sierra Vista Arizona 85635

Carol E. Cowan HOLIDAY WATER COMPANY P.O. Box 309 Tombstone Arizona 85638

Lucky Hills Water Company P.O. Box 309 Tombstone Arizona 85638

Copper Valley Telephone Inc. PO Box 970 Willcox Arizona 85644

Valley Telephone Cooperative, Inc. PO Box 970 Willcox Arizona 85644

Marshall Magruder P.O. Box 1267 Tubac, Arizona 85646

James Patterson Santa Cruz Valley Citizens Council PO Box 1501 Tubac Arizona 85646

Trico Electric Cooperative, Inc. P.O. Box 930 Marana Arizona 85653

Neil Petersen MCNEAL WATER COMPANY PO Box 12776 Fort Huachuca Arizona 85670

Karen Hartwell Rincon Water Company HC #70 Box 3601 Sahuarita Arizona 85692

Rhonda Mallis Rosenbaum 414 North Court Avenue Tucson Arizona 85701

Charles Wesselhoft Pima County Attorney's Office 32 North Stone Avenue, Suite 2100 Tucson Arizona 85701

UNS Electric, Inc. Attn: Melissa Morales PO Box 711 MS HQE910 Tucson Arizona 85702

Lazy C Water Service PO Box 1 Tucson Arizona 85702 Valley Connections, LLC P.O. Box 970 Wilcox Arizona 85644

Baca Float Water Company PO Box 1536 Tubac Arizona 85646

Richard Lockwood Baca Float Water Company PO Box 1536 Tubac Arizona 85646

Rillito Water Users Association PO Box 668 Rillito Arizona 85646

Juanita Carbajal P.O. Box 668 Rillito Arizona 85654

McNeal Water Company PO Box 12776 Ft. Huachuca Arizona 85670-2776

Ray Water Company, Inc. 414 N. Court Ave. Tucson Arizona 85701

Barbara LaWall
PIMA COUNTY ATTORNY'S OFFICE
c/o Charles Wesselhoft
32 North Stone Avenue, Suite 2100
Tucson Arizona 85701

Tucson Electric Power Company Attn: Melissa Morales PO Box 711, MS HQE910 Tucson Arizona 85702

Robert J. Canfield LAZY C WATER SERVICE P.O. BOX 1 Tucson Arizona 85702

Jeff Schlegel SWEEP ARIZONA REPRESENTATIVE 1167 W. Samalayuca Dr. Tucson Arizona 85704-3224

Jody Carlson LOS CERROS WATER COMPANY, INC 4003 North Flowing Wells Road Suite 111 Tucson Arizona 85705

Christopher Volpe 1010 N. Finance Center Dr., Ste 200 Tucson Arizona 85710 Los Cerros Water Company, Inc. 4003 N. Flowing Wells Rd., Ste. 111 Tucson Arizona 85705

Vail Water Company, Inc. 1010 N. Finance Center Dr., Ste. 200 Tucson Arizona 85710

Ambalel B. Patel dba D. M. Motel 2131 S. Craycroft Rd. Tucson Arizona 85711

Bruce Plenk 2958 N. St. Augustine Pl Tucson Arizona 85712

Southwestern Farm and Cattle & Np Tryson Blvd., Ste. 100
Tucson Arizona 85716

Tubac Water Company, Inc. Attn: Michael Urman 2525 Boradway Blvd. Tucson Arizona 85716

Mark Weinburg Red Rock Utilities, LLC 2200 East River Road, Suite 115 Tucson Arizona 85718

Red Rock Utilities, LLC 2200 E. River Rd. - 115 Tucson Arizona 85718

Rudolf H. Barsotti HALCYON ACRES WATER USERS ASSOCIATION, INC. PO Box 18448 Tucson Arizona 85731

Tierra Linda Water Company, Inc. PO Box 14858 Tucson Arizona 85732

Cayetano, Inc. dba Lakewood Water Company PO Box 14858 Tucson Arizona 85732

Tortolita Water Company, Inc. PO Box 57037 Tucson Arizona 85732-7037

Cactus-Stellar Limited HCR 2, Box 469 Tucson Arizona 85735

Mike Gallego Cactus-Stellar Limited HCR 2, Box 469 Tucson Arizona 85735 Marian Homiak 4549 E. Fort Lowell Rd. Tucson Arizona 85712

Sahuarita Water Company, LLC 4549 E. Fort Lowell Rd. Tucson Arizona 85712

James Vermilyea EMPIRITA WATER COMPANY, INC. 2850 East Skyline Dr. STE 100 Tucson Arizona 85716

Terry Finefrock 4640 E. Calle Barrial Tucson Arizona 85718

Spanish Trail Water Company 2200 E. River Rd., Ste. 115 Tucson Arizona 85718

Halcyon Acres Water User Association, Inc. PO Box 18448 Tucson Arizona 85731

Saguaro Water Company PO Box 14858 Tucson Arizona 85732

Viva Development Corporation PO Box 12863 Tucson Arizona 85732

Lisa Sullivan P. O. Box 14858 Tucson Arizona 85732

Kevin M. Koch P.O. Box 42103 Tucson Arizona 85733

Janice E. Worden & Lawrence A. Worden dba Worden Water Company 15150 W. Ajo Way, Ste. 568 Tucson Arizona 85735

Christopher W. Hill TWIN HAWKS UTILITY, INC. PO Box 70022 Tucson Arizona 85737

Scott Wootton
DESERT VALENCIA WATER, INC.
10826 N. Sand Canyon Pl.
Oro Valley Arizona 85737

Bryan Lovitt 3301 West Cinnamon Drive Tucson Arizona 85741 Twin Hawks Utility, Inc. PO Box 70022 Tucson Arizona 85737

Desert Valencia Water, Inc. 2419 E. Skipping Rock Way Tucson Arizona 85737

Kevin Tarbox WILLOW SPRINGS UTILITY, LLC 3275 West Ima Road, Ste. 275 Tucson Arizona 85741

Rancho Del Conejo Community Water (2436), WicRudasill Rd. Tucson Arizona 85743

Avra Water Cooperative, Inc. 11821 W. Picture Rocks Rd. Tucson Arizona 85743

Bonnie L O' Connor Southwestern Utility Management, Inc. P.O. Box 85160 Tucson Arizona 85754

Halcyon Acres Annex #2 Water Conមូនអាម៉ិ5/ថៃ0 Tucson Arizona 85754

Chaparral Water Properties, Inc. PO Box 85160 Tucson Arizona 85754

Voyager Water Company PO Box 85160 Tucson Arizona 85754

Mescal Lakes Water Systems, Inc. PO Box 85160 Tucson Arizona 85754

Clear Springs Utility Company, Inc. PO Box 85160 Tucson Arizona 85754

Mirabell Water Company, Inc. PO Box 85160 Tucson Arizona 85754

La Casita Water Company, Inc. PO Box 85160 Tucson Arizona 85754

Thim Utility Co. PO Box 85160 Tucson Arizona 85754

Valle Verde Water Company PO Box 85160 Tucson Arizona 85754 Willow Springs Utilities, LLC 3275 W. Ina Rd., Ste. 275 Tucson Arizona 85741-2338

Albert Lannon
Rancho Del Conejo Community Water CO-OP, Inc
13130 West Rudasill Rd
Tucson Arizona 85743

Cathy Kuefler
AVRA WATER CO-OP, INC.
11821 West Picture Rocks Road
Tucson Arizona 85743
Cathy@avrawater.com
lindac@avrawater.com

Consented to Service by Email

Goodman Water Company PO Box 85160 Tucson Arizona 85754

Anway Manville LLC Water Company PO Box 85160 Tucson Arizona 85754

Bob B. Watkins dba East Slope Water PO Box 85160 Tucson Arizona 85754

Mountain Glen Water Service, Inc. PO Box 85160 Tucson Arizona 85754

Naco Water Company, LLC PO Box 85160 Tucson Arizona 85754

Dragoon Water Company PO Box 85160 Tucson Arizona 85754

Park Water Company, Inc. PO Box 85160 Tucson Arizona 85754

Francesca Water Company, Inc. PO Box 85160 Tucson Arizona 85754

Thim Water Corporation PO Box 85160 Tucson Arizona 85754

Starlight Water Company, Inc. PO Box 85160 Tucson Arizona 85754

Sonoita Valley Water Company PO Box 85160 Tucson Arizona 85754 Southland Utilities Company, Inc. PO Box 85160 Tucson Arizona 85754

Sandario Water Company, Inc. PO Box 85160 Tucson Arizona 85754

Tom Lord PO Box 3048 Show Low Arizona 85902

Voyager at White Mountain Lakes የActBo € 9,860. White Mountain Lake Arizona 85912

Livco Water Company PO Box 659 Concho Arizona 85924

Pinecrest Water Company, Inc. PO Box 97 Nutrioso Arizona 85932

Vernon Valley Water, Inc. PO Box 364 Overgaard Arizona 85933

Cedar Grove Water, Inc. PO Box 364 Overgaard Arizona 85933

Mark Grapp PO Box 364 Overgaard Arizona 85933

F. Wayne Thompson and Dorothy
Thompson Village Water Company
809 W. Riordan Ranch Rd., Ste. 100 Box 166
Flagstaff Arizona 86001

Patricia Ashbrook FOREST HIGHLANDS WATER COMPANY 2425 William Palmer Flagstaff Arizona 86001

Doney Park Water 5290 E. Northgate Loop Flagstaff Arizona 86004

William Lesko HECKETHORN WATER COMPANY 4400 E. Button Lane Flagstaff Arizona 86005

Mountain Dell Water, Inc. 1492 W. Palmer Ave. Flagstaff Arizona 86005

Saffron A. Coons Ponderosa Utility Company 949 Osage Flagstaff Arizona 86005 Sitgreaves Water Company PO Box 3048 Show Low Arizona 85902

Lord Arizona Water Systems, Inc. PO Box 3048 Show Low Arizona 85902

Rick Kautz Livco Sewer Company PO Box 659 Concho Arizona 85924

Navopache Electric Cooperative, Inc. 1878 W. White Mountain Blvd Lakeside Arizona 85929

Nathan Castillo PINECREST WATER COMPANY, INC. PO Box 97 Nutrioso Arizona 85932

WATCO, Inc. PO Box 364 Overgaard Arizona 85933

A. Petersen Water Company, Inc. PO Box 364 Overgaard Arizona 85933

WHITE MOUNTAIN COMMUNICATIONS, INC. PO Box 2329 Pinetop Arizona 85935

Peter Reznick MOUNTAIN DELL WATER, INC. 1492 W. Palmer Ave. Flagstaff Arizona 86001

Klaudia Ness BELLEMONT WATER COMPANY P.O. Box 31176 Flagstaff Arizona 86003

Bill Linville
DONEY PARK WATER
5290 East Northgate Loop
Flagstaff Arizona 86004

Forest Highlands Water Company 2425 William Palmer Flagstaff Arizona 86005

Ponderosa Utility Corporation 949 Osage St. Flagstaff Arizona 86005 Hydro-Resources Inc. PO Box 3246 549 Camper Village Grand Canyon Arizona 86023

Scott I. Gold FLAGSTAFF RANCH WATER CO., INC. P.O. Box 38012 Mormon Lake Arizona 86038

Brent Mullen
TALL PINES ESTATES WATER & IMPROVEMENT
HC 31 Box 25
Mormon Lake Arizona 86038

Terry Theken GREENHAVEN SEWER COMPANY, INC P.O. Box 5122 Page Arizona 86040

Sam Dubois WALDEN MEADOWS COMMUNITY CO-OP 9325 Donegal Dr., Ste. A Wilhoit Arizona 86223

Charles Horsley GRANITE DELLS WATER CO. 3025 North State Route 89 Prescott Arizona 86301

Meadow Water Company P.O. Box 3937 Prescott Arizona 86302

ICR Water Users Association, Inc. PO Box 2344 Prescott Arizona 86302-2344

Sherman Pines Homeowners Assoc., th203 E. Pine Ridge Dr. Prescott Arizona 86303-5940

Don Bohlier BRADSHAW WATER COMPANY PO Box 12758 Prescott Arizona 86304

Bradshaw Water Company PO Box 12758 Prescott Arizona 86304

Loma Estates Water Co., LLC 11620 Bella Sierra Trail Prescott Arizona 86305

Puesta Del Sol Water Company 11301 E. Indigo Rd. Prescott Valley Arizona 86315

Lewis Hume ASH FORK DEVELOPMENT ASSOCIATION, INC. PO Box 436 Ash Fork Arizona 86320 John Rueter HYDRO-RESOURCES, INC. P.O. Box 3246 549 Camper Village Grand Canyon Arizona 86023

Chris Brainard TUSAYAN WATER DEVELOPMENT ASSOCIATION, INC. P.O. Box 520 Grand Canyon Arizona 86023

Tall Pines Estates Water & Improvement Association, Inc. HC 31 Box 25 Mormon Lake Arizona 86038

Greenehaven Sewer Company, Inc., PO Box 5122 Greenehaven Arizona 86040

Greenehaven Water Company, Inc. PO Box 5122 Greenehaven Arizona 86040-5122

Granite Dells Water Company 3025 N. State Route 89 Prescott Arizona 86301

Groom Creek Water User's Association PO Box 3897 Prescott Arizona 86302

Kal Miller GROOM CREEK WATER USERS ASSOCIATION P.O. Box 3897 Prescott Arizona 86302

Terry Hill
SHERMAN PINES HOMEOWNERS ASSOCIATION,
INC.
1203 East Pine Ridge Drive
Prescott Arizona 86303

White Horse Ranch Owners Association Inc. c/o HOAMCO PO Box 10000 Prescott Arizona 86304

Cindy Leath WHITE HORSE RANCH OWNERS ASSOCIATION, INC. PO Box 10000 Prescott Arizona 86304

Julie Baker LOMA ESTATES WATER CO., LLC 11620 Bella Sierra Trail Prescott Arizona 86305 Copper Market, Inc. PO Box 245 Bagdad Arizona 86321

Stanley Bullard CAMP VERDE WATER SYSTEM, INC. PO Box 340 Camp Verde Arizona 86322

Camp Verde Water System, Inc. PO Box 340 Camp Verde Arizona 86322

Lake Verde Water Company PO Box 2777 Camp Verde Arizona 86322

Antelope Lakes Water Company PO Box 350 Chino Valley Arizona 86323

Arden W. Barney Granite Mountain Water Company, Inc. P.O. Box 350 Chino Valley Arizona 86323

Granite Mountain Water Company PO Box 350 Chino Valley Arizona 86323

Robert Busch GRANITE OAKS WATER USERS ASSOCIATION, INC. PO Box 4947 Chino Valley Arizona 86323

William E. Jackson Jr.
OAK CREEK PUBLIC SERVICE, LLC
PO Box 103
Cornville Arizona 86325

Walden Meadows Community Co-Op 9325 S. Donegal Dr., Ste. A Kirkland Arizona 86332

Humboldt Water Systems, Inc. PO Box 938 Mayer Arizona 86333

Abra Water Company, Inc. PO Box 515 Paulden Arizona 86334

Montezuma Rimrock Water Company, BQC1 E. Beaver Creek Rd. Rimrock Arizona 86335

Michael's Ranch Water Users' Assolviational Ranch Dr. Sedona Arizona 86336

Boynton Canyon Enchantment 5257Boynters @ssyctaffish Sedona Arizona 86336 Flagstaff Ranch Water Company, Inc. PO Box 38501 Mormon Lake Arizona 86308

Wyman Shepherd 11301 East Indigo Road Prescott Arizona 86315

Ash Fork Development Association, Inc. PO Box 436 Ash Fork Arizona 86320-0436

Dane Bullard dba Verde West Irrigation PO Box 744 Camp Verde Arizona 86322

Verde Lakes Water Company 2867 S. Verde Lakes Dr., Ste. B Camp Verde Arizona 86322

Alan Williams
VERDE LAKES WATER CORPORATION
2867 S. Verde Lakes Dr., Suite B
Camp Verde Arizona 86322

Dugan McDonald LAKE VERDE WATER COMPANY, INC. P.O. Box 2777 Camp Verde Arizona 86322

Appaloosa Water Company PO Box 3150 Chino Valley Arizona 86323

Chino Meadows II Water Company PO Box 350 Chino Valley Arizona 86323

Joseph Cordovana APPALOOSA WATER COMPANY PO Box 3150 Chino Valley Arizona 86323

Granite Oaks Water Users Association, Inc. P.O. Box 4947 Chino Valley Arizona 86323

Oak Creek Public Service, LLC PO Box 103 Cornville Arizona 86325

Sacramento Utilities, LLC PO Box 132 Kirkland Arizona 86332

Kevan Larson ABRA WATER COMAPNY, INC. P.O. Box 515 Paulden Arizona 86334 Seven Canyons Water Company 755 Golf Club Way Sedona Arizona 86336

Jack Seeley
OAK CREEK WATER CO., NO. 1
90 Oak Creek Boulevard
Sedona Arizona 86336

Warren Woodward 200 Sierra Road Sedona Arizona 86336

Timothy L. Kyllo KYLLO DEVELOPMENT CORP DBA BRADSHAW MOUNTAINVIEW WATER COMPANY P.O. Box 10593 Sedona Arizona 86339

Stoneman Lake Water Company, Inc. PO Box 10061 Sedona Arizona 86339

Lance Wischmeier
PINE VALLEY WATER COMPANY
480 Raintree Road
Sedona Arizona 86351

Steven Gudovic BIG PARK WATER COMPANY 45 Castle Rock Rd., Ste. 4 Sedona Arizona 86351

Cerbat Water Company 7313 E. Concho Dr., Ste. B Kingman Arizona 86401

Scott R. Dunton WALNUT CREEK WATER CO., INC. 119 East Andy Devine Avenue Kingman Arizona 86401

Double R Water Distributors, Inc. 500 Lake Havasu Ave. N. Ste. C100 Lake Havasu City Arizona 86403

Bobbie L. Wood VALLEY PIONEER'S WATER COMPANY, INC. 5998 West Chino Drive Golden Valley Arizona 86413

Delman E. Eastes 2042 E. Sandtrap Lane Fort Mohave Arizona 86426

Rafe Cohen SUNRISE VISTAS UTILITIES COMPANY P.O. Box 8555 Ft. Mohave Arizona 86427 Patricia D Olsen Montezuma Rimrock Water Co. 3031 East Beaver Creek Road P.O Box 10 Rimrock Arizona 86335

Oak Creek Water Co., No. 1 90 Oak Creek Blvd. Sedona Arizona 86336

Susanne Knight Boynton Canyon Enchantment Homeowners Association Water Utility Company 525 Boynton Canyon Road Sedona Arizona 86336

Seven Canyons Water Treatment Company 755 Golf Club Way Sedona Arizona 86336

Heather Pugsley STEVEN CANYONS WATER TREATMENT COMPANY 755 GOLF CLUB WAY Sedona Arizona 86336

Howard Green MICHAEL'S RANCH WATER USERS ASSOC. One Michael's Ranch Road Sedona Arizona 86336

Robert Pickels, Jr. Sedona City Attorney's Office 102 Roadrunner Drive Sedona Arizona 86336

Edward Elliott STONEMAN LAKE WATER COMPANY, INC. PO Box 10061 Sedona Arizona 86339

Pine Valley Water Company 480 Raintree Rd. Sedona Arizona 86351

Little Park Water Company 45 Castle Rock Rd., Ste. 4 Sedona Arizona 86351

Big Park Water Company 45 Castle Rock Rd., Ste. 4 Sedona Arizona 86351

Rick Neal CERBAT WATER COMPANY 7313 E. Concho Dr., Ste. B Kingman Arizona 86401

Walnut Creek Water Company, Inc. 119 E. Andy Devine Ave. Kingman Arizona 86401 Tom Stoddard VIRGIN MOUNTAIN UTILITIES COMPANY, INC. P.O. Box 668 Littlefield Arizona 86432

DS Water Company PO Box 786 Desert Springs Arizona 86432

Virgin Mountain Utilities Company, Inc. PO Box 668 Littlefield Arizona 86432

G. Robert Frisby Beaver Dam Water Company, Inc. PO Box 550 Littlefield Arizona 86432

Beaver Valley Water Company, Inc. PO Box 550 Littlefield Arizona 86432

Grand Canyon Caverns and Inn, LLC P.O. Box 180 Peach Springs Arizona 86434

Linda Wayland GOLDEN SHORES WATER COMPANY, INC. PO Box 37 Topock Arizona 86436

Jimmy Lee Todd YUCCA WATER ASSOCIATION, INC. PO Box 575, Frontage Road Yucca Arizona 86438

Mt. Tipton Water Co., Inc. PO Box 38 Dolan Springs Arizona 86441

Fort Mohave Tribal Utilities Authority Attn: Virginia Tasker, Accountant PO Box 5559 Mohave Valley Arizona 86446

ValuTel Communications, Inc. PO Box 25663 Albuquerque New Mexico 87125-0663

Sunrise Utilities, L.L.C. 190 E. Mesquite Blvd., Unit A Mesquite Arizona 89027

Wendy Barnett BERMUDA WATER COMPANY 1240 East State Street, Suite 115 Pahrump Nevada 89048

Bermuda Water Company, Inc. 1240 E. State St., Ste. 115 Pahrump Nevada 89048 Todd Bremner Double R Water Distributors, Inc. 60 Acoma Blvd. S, Suite B-104 Lake Havasu City Arizona 86403

Valley Pioneer's Water Company, Inc. 5998 W. Chino Dr. Golden Valley Arizona 86413

Sunrise Vistas Utilities Company PO Box 8555 Ft. Mohave Arizona 86427

Mohave Electric Cooperative, Inc. P.O. Box 1045 Bullhead City Arizona 86430

Biasi Water Company, Inc. PO Box 518 Beaver Dam Arizona 86432

Beaver Dam Water Company, Inc. PO Box 550 Litchfield Arizona 86432

Patti Wynn DS WATER COMPANY PO Box 786 Desert Springs Arizona 86432

Gary Biasi Biasi Water Company, Inc. PO Box 518 Beaver Dam Arizona 86432

Terry Williamson GRAND CANYON CAVERNS AND INN, LLC PO Box 180 Peach Springs Arizona 86434

Golden Shores Water Company, Inc. PO Box 37 Topock Arizona 86436

Yucca Water Association, Inc. PO Box 575 Yucca Arizona 86438

Joseph Duarte MOUNT TIPTON WATER CO., INC. PO Box 38 Dolan Springs Arizona 86441

Amanda McCord Fort Mohave Tribal Utilities Authority Attn: Virginia Tasker PO Box 5559 Mohave Valley Arizona 86446 National Access Long Distance, Inc. 871 Coronado Center Dr. - 200 Henderson Nevada 89052

Consumer Telcom, Inc. 701 N. Green Valley Pkwy., Ste. 300 Henderson Nevada 89074

Jessica Renneker NOS COMMUNICATIONS, INC 250 Pilot Road Las Vegas Nevada 89119

Affinity Network Incorporated dba QuantumLink Communications 250 Pilot Rd., Ste. 300 Las Vegas Nevada 89119

Nosva Limited Partnership 250 Pilot Rd. - 300 Las Vegas Nevada 89119

XYN Communications, LLC 8275 Eastern Ave. #200 Las Vegas Nevada 89123

Network Service Billing, Inc. 7251 W. Lake Mead Bivd. - 300 Las Vegas Nevada 89128

Custom Teleconnect, Inc. 6242 W. Desert Inn Rd. Las Vegas Nevada 89146

Southwest Gas Corporation 5241 Spring Mountain Road P.O. Box 98510 Las Vegas Nevada 89193

America Net, LLC 3580 Wilshire Blvd, 17th Floor Los Angeles California 90010

Comnet (USA) LLC 700 S. Flower St. - 950 Los Angeles California 90017

Bradley J. Herrema 2049 Century Park East Suite 3550 Los Angeles California 90067-3007

Total Call International, Inc. 1411 W. 190th St. - 700 Gardena California 90248

Total Holdings, Inc. dba GTC COMMUNICATIONS 3777 Long Beach Blvd. - 300 Long Beach California 90807 ValuTel Communications, Inc. dba VALUETEL COMMUNICATIONS PO Box 25663 Albuquerque New Mexico 87125

Columbus Electric Cooperative, Inc. P.O. Box 631 Deming New Mexico 88031

David Rall SUNRISE UTLITIES, LLC 190 East Mesquite Boulv, Unit A Mesquite Nevada 89027

Perkins Mountain Water Company 1240 E. State St., Ste. 115 Pahrump Nevada 89048

Perkins Mountain Utility Company 1240 E. State St., Ste. 115 Pahrump Nevada 89048

Conectado, Inc. 701 N. Green Valley Pkwy. - 200 Henderson Nevada 89074

Affinity Network Incorporated 250 Pilot Rd., Ste 300 Las Vegas Nevada 89119

Nosva Limited Partnership dba Cierracom Systems 250 Pilot Rd., Ste. 300 Las Vegas Nevada 89119

NOS Communications, Inc. 250 Pilot Rd. - 300 Las Vegas Nevada 89119

U.S. Telecom Long Distance, Inc. 3960 Howard Hughes Pkwy. 5th Floor #5001F Las Vegas Nevada 89119

Custom Communications Network 2251 N. Rampart Blvd., Ste. 255 Las Vegas Nevada 89128

Wide Voice, LLC 410 S. Rampart St. - 390 Las Vegas Nevada 89145

Legent Comm, LLC dba Long Distance America dba Long Distance Servic 4775 S. Durango Dr., Ste. 105 Las Vegas Nevada 89147

Communications Network Billing, Inc. 200 S. Virgina St. 8th Floor Reno Nevada 89501

OPEX Communications, Inc. 3777 Long Beach Blvd., Ste. 300 Long Beach California 90807

Total Holdings, Inc. 3777 Long Beach Blvd., Ste. 300 Long Beach California 90807

Airespring Inc. 6060 Sepulveda Blvd. Suite 220 Van Nuys California 91411

Preferred Long Distance, Inc. Attn Keith Nussbaum, Executive Vice President 16830 Ventura Blvd. - 350 Encino California 91436

Judi Schuetz KATHERINE RESORT WATER COMPANY 7885 Quince Street La Mesa California 91941

NobleTel, LLC 5973 Avenida Encinas - 202 Carlsbad California 92008

North County Communications 630020Rettemcrans - 485 San Diego California 92110

SECURED RETAIL NETWORKS, INC. 26000 Town Centre Drive, Ste. 100 Foothill Ranch California 92610

Clear World Communications 2000 Attist MacArthur Boulevard, Suite 204 Santa Ana California 92704

Circle City Water Co., LLC PO Box 82218 Bakersfield California 93380

Robert T. Hardcastle BROOKE WATER, LLC CIRCLE CITY WATER COMPANY, LLC P.O. Box 82218 Bakersfield California 93380-2218

ABS-CBN Telecom North America, Inc. 150 Shoreline Drive Redwood City California 94065-1400

Sprint Communications Company, L.P. 201 Mission Street, Suite 1500 San Francisco California 94105

MCImetro Access Transmission 20ft/2004. 7th Floor San Francisco California 94105 Curatel, LLC 1605 W. Olympic Blvd., - 800 Los Angeles California 90015

TELMATE LLC 10940 Wilshire Blvd., Ste. 2030 Los Angeles California 90024

Network Enhanced Technologies, Inc. 269 Beverly Dr., Ste. 1533 Los Angeles California 90212

Legacy Long Distance International, Inc. 10833 Valley View St., Ste. 150 Cypress California 90630

Bruce Li OPEX COMMUNICATIONS, INC 3777 Long Beach Boulevard, Suite 300 Long Beach California 90807

Total Call International, Inc. 1411 W. 190th St., Ste. 650 Gardena California 90807

Business Discount Plan, Inc. One World Trade Center, Suite 800 Long Beach California 90831

Preferred Long Distance, Inc. 16830 Ventura Blvd. - 350 Encino California 91436

Enhanced Communication Network, Inc. 1031 S. Glendora Ave. West Covina California 91790

Katherine Resort Water Company 7885 Quince Street. La Mesa California 91941

Noble Americas Energy Solutions, LLC 401 W. A St., Ste. 500 San Diego California 92101-3017

1-800 Collect, Inc. 1685 Gailes Blvd., Ste. B San Diego California 92154

Pacific Communications, LLC 18655 Teller Ave. Irvine California 92612-1610

TNCI Operating Company LLC 114 E. Haley St. - A Santa Barbara California 93101

Brooke Water LLC PO Box 82218 Bakersfield California 93380 Greenfly Networks, Inc. dba Clearfly Communications P.O. Box 77706 San Francisco California 94107

MegaPath Corporation 6800 Koll Center Parkway, Suite 200 Pleasanton California 94566

QuantumShift Communications, Inc. Attn: Jenna Brown 12657 Alcosta Blvd. - 418 San Ramon California 94583

Airnex Communications, Inc. 5000 Hopyard Rd., Ste. 240 Pleasanton California 94588-3352

Rio Virgin Telephone Co. PO Box 189 Escada Oregon 97023

Cascade Access, L.L.C. PO Box 189 Estacada Oregon 97023-0189

CREDIT UNION WIRELESS, LLC PO Box 12398 Salem Oregon 97309

Buehner-Fry, Inc. 389 SW Scalehouse Ct., Ste. 100 Bend Oregon 97702-3241

Accessline Communications 6310014666 Place, S.E. Bellevue Washington 98007

Frontier Communications of the White Machtals Shc.
Everett Washington 98201

Navajo Communications Company, Inc. 1800 41st St. Everett Washington 98203

Ben Thomas DATELAND WATER LLC P.O. Box 98 Anacortes Washington 98221

Mountain Telecommunications of AbadntagracTelecom
18110 SE 34th St., Bldg. One, Ste. 100 Vancouver Washington 98683

Mountain Telecommunications of A8260a5En34th St. Bldg. 1, Ste. 100 Vancouver Washington 98683

Table Top Telephone Company, Inc. P.O. Box 21 O'Neals California 93645

Working Assets Funding Service Inc. 101 Market St., Ste. 700 San Francisco California 94105

TTI National, Inc. 201 Spear St., 7th Floor San Francisco California 94105

Greenfly Networks, Inc. 450 Townsend Street San Francisco California 94107

WiMacTel, Inc 2225 E. Bayshore Rd. Ste. 200 Palo Alto California 94303

Jaroth, Inc. dba Pacific Telemanagement Services 2001 Crown Canyon Rd., Ste. 200 San Ramon California 94583

Jaroth, Inc. 2001 Crown Canyon Rd., Ste. 201 San Ramon California 94583

Rio Virgin Telephone Co. dba Reliance Connects PO Box 189 Estacada Oregon 97023

Brenda Crosby CASCADE ACCESS, LLC 303 SW Zobrist Estacada Oregon 97023

CONSUMER CELLULAR, INC. 7204 SW Durham Rd Portland Oregon 97224

Buehner Fry, Inc 389 SW Scalehouse Court, Suite 100 Bend Oregon 97702

T-MOBILE WEST, LLC 12920 SE 38th Street Bellevue Washington 98006

Frontier Communications of the Southwest, Inc. 1800 4th St. Everett Washington 98201

Frontier Citizens Utilities Rural 1800 41st St. Everett Washington 98201 Gold Line Telemanagement, Inc. 300 Allstate Pkwy Markham Ontario Canada L3R 0P2 Raymond Lee FRONTIER CITIZENS UTILITIES RURAL 1800 41st Street Everett Washington 98203

Dateland Water LLC PO Box 98 Anacortes Washington 98221

Electric Lightwave, LLC dba Integra Telecom 18110 SE 34th St., Bldg. One, Ste. 100 Vancouver Washington 98683

Eschelon Telecom Of Arizona, Inc. dba Integra Telecom 18110 SE 34th St., Bldg One, Ste. 100 Vancouver Washington 98683

Ву:

Lynn Jahnke
Executive Aide



COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



ARIZONA CORPORATION COMMISSION

0000172866

COMMISSIONER

Direct Line: (602) 542-3682 Email: RBurns-web@azcc.gov

ORIGINAL

August 25, 2016

Re: Arizona Public Service Company, Docket No. E-01345A-16-0036 /E -D1345A-1U-0123

Dear Mr. Brandt:

For nearly two years now, APS has refused to voluntarily answer my questions about any political expenditures that APS/Pinnacle West may have made. Consequently, it is necessary for me to proceed in a more direct way.

I now seek to continue my investigation to determine whether APS has used ratepayer funds for political, charitable or other expenditures. This includes all expenditures made by APS, Pinnacle West and under APS's brand name for any purpose.

In his May 4, 2016 legal opinion, Attorney General Brnovich specifically stated that an individual Commissioner's § 4 constitutional authority "could relate to an affiliate of a [public service corporation] only if the affiliate is a Public Company." Ariz. Att'y Gen. Op. I16-130 at 12. In other words, the constitutional powers conferred to individual commissioners in §4 extend to a publicly traded company, which Pinnacle West is.

Please see the attached subpoenas outlining the information I seek. I look forward to your full compliance in this matter. Please be aware that I intend to publicly file all documents related to this investigation.

Sincerely,

Robert L. Burns Commissioner

Select & Bene

cc: Service list from E-01345A-16-0036

Arizona Corporation Commission DOCKETED

AUG 2 5 2016

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AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

•	
2	COMMISSIONERS DOUG LITTLE - Chairman
3	BOB STUMP BOB BURNS
4	TOM FORESE ANDY TOBIN
5	IN THE MATTER OF THE APPLICATION DOCKET NO. E-01345A-16-0036
6	OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE
7	FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING SUBPOENA DUCES TECUM
8	PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE
9	SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.
10	SOCITALI ORIV.
11	
12	TO: Arizona Public Service Company P.O. Box 53999
13	Phoenix, AZ 85072
14	400 North 5 th Street Phoenix, AZ 85004
15 16	
17	Donald E. Brandt Chairman, President and Executive Officer
18	Arizona Public Service Company & Pinnacle West Capital Corporation Mail Station 9042
19	P.O. Box 53999 Phoenix, AZ 85072
20	In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the
21	documents and information requests set forth in Attachment A.
22	YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona Constitution.
23	A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under oath in connection
24	with the matters set forth in Attachment A (see Attachment B).
25	CONTROL CONTRO
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2		BEFORE WHOM APPEARANCE TO BE MADE:
3		Robert L. Burns, Commissioner Arizona Corporation Commission
4		1200 W. Washington Phoenix, AZ 85007
5	I.	YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:
6		See Attachment A.
7		
8		
9		DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:
10		September 15, 2016 at 10:00 a.m.
11		PLACE OF APPEARANCE: Arizona Corporation Commission
12		2 nd Floor Conference Room 1200 W. Washington
13		Phoenix, AZ 85007
14	II.	YOU ARE COMMANDED to bring with you written responses to the following questions:
15		See Attachment A.
16		
17		
18		DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:
19		September 15, 2016 at 10:00 a.m.
20		PLACE OF APPEARANCE: Arizona Corporation Commission
21		2 nd Floor Conference Room 1200 W. Washington
22		Phoenix, AZ 85007
23	m.	YOU ARE COMMANDED to appear and give testimony concerning:
24		See Attachment A.
25)	
26		
27		tion to Mr. Brandt, please produce the appropriate person(s) to address questions and the documents and information requests set forth in Attachment A.
28	- obman	2

1 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m. 2 PLACE OF APPEARANCE: Arizona Corporation Commission Hearing Room #1 3 1200 W. Washington Phoenix, AZ 85007 4 For your convenience, prior to the appearance date for production of documents and written responses requested in I. and II. above, you may turn in the subpoenaed documents and responses to Commissioner Burns' Office located at the above address. If you elect to do this, you need not appear personally at the appointed place and time on September 15, 2016. Personal appearance(s), however, are required on October 6, 2016 at 10:00 a.m. as directed in III. 8 9 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner Arizona Corporation Commission 10 1200 W. Washington Phoenix, AZ 85007 Telephone: 602-542-3682 11 E-mail: rburns@azcc.gov 12 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation 13 Commission and may subject you to further proceedings and penalties under law. 14 Issued this 25 day of August, 2016. 15 16 17 Robert "Bob" Burn's, Commissioner Arizona Corporation Commission 18 19 20 21 22 23 24 25 Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. 27 3 28

BEFORE THE ARIZONA CORPORATION COMMISSION

	N .
2	COMMISSIONERS DOUG LITTLE - Chairman
3	BOB STUMP
4	BOB BURNS TOM FORESE
5	ANDY TOBIN
6	IN THE MATTER OF THE APPLICATION DOCKET NO. E-01345A-16-0036 OF ARIZONA PUBLIC SERVICE
7	COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE SUBPOENA
8	UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A HIST AND BY A SONARI E BATE OF
9	A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP
10	SUCH RETURN.
11	
12	TO: Pinnacle West Capital Corporation
13	400 North 5th Street Phoenix, AZ 85004
14	
15	<u>Donald E. Brandt</u> Chairman, President and Executive Officer
16	Arizona Public Service Company & Pinnacle West Capital Corporation Mail Station 9042
17	P.O. Box 53999 Phoenix, AZ 85072
18	
19	In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.
20	
21	YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona
22	Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under
23	oath in connection with the matters set forth in Attachment A (see Attachment B).
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	BEFORE WHOM APPEARANCE TO BE MADE:
	Robert L. Burns, Commissioner
	Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007
200	I. YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:
	See Attachment A.
	DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:
	September 15, 2016 at 10:00 a.m.
	PLACE OF APPEARANCE: Arizona Corporation Commission
	2 nd Floor Conference Room 1200 W. Washington
	Phoenix, AZ 85007
]	II. YOU ARE COMMANDED to bring with you written responses to the following
]	II. YOU ARE COMMANDED to bring with you written responses to the following questions:
]	II. YOU ARE COMMANDED to bring with you written responses to the following
1	II. YOU ARE COMMANDED to bring with you written responses to the following questions: See Attachment A.
1	II. YOU ARE COMMANDED to bring with you written responses to the following questions: See Attachment A.
1	YOU ARE COMMANDED to bring with you written responses to the following questions: See Attachment A.
1	YOU ARE COMMANDED to bring with you written responses to the following questions: See Attachment A. DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES: September 15, 2016 at 10:00 a.m.
1	YOU ARE COMMANDED to bring with you written responses to the followin questions: See Attachment A. DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES: September 15, 2016 at 10:00 a.m. PLACE OF APPEARANCE: Arizona Corporation Commission 2nd Floor Conference Room
1	YOU ARE COMMANDED to bring with you written responses to the followin questions: See Attachment A. DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES: September 15, 2016 at 10:00 a.m. PLACE OF APPEARANCE: Arizona Corporation Commission
	DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES: September 15, 2016 at 10:00 a.m. PLACE OF APPEARANCE: Arizona Corporation Commission 2 nd Floor Conference Room 1200 W. Washington Phoenix, AZ 85007
	DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES: September 15, 2016 at 10:00 a.m. PLACE OF APPEARANCE: Arizona Corporation Commission 2 nd Floor Conference Room 1200 W. Washington Phoenix, AZ 85007
	DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES: September 15, 2016 at 10:00 a.m. PLACE OF APPEARANCE: Arizona Corporation Commission 2 nd Floor Conference Room 1200 W. Washington Phoenix, AZ 85007

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A. 2 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m. 3 PLACE OF APPEARANCE: Arizona Corporation Commission Hearing Room #1 4 1200 W. Washington 5 Phoenix, AZ 85007 6 For your convenience, prior to the appearance date for production of documents and written responses requested in I. and II. above, you may turn in the subpoenaed documents and responses to 7 Commissioner Burns' Office located at the above address. If you elect to do this, you need not appear personally at the appointed place and time on September 15, 2016. Personal appearance(s), 8 however, are required on October 6, 2016 at 10:00 a.m. as directed in III. 9 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner 10 Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007 11 Telephone: 602-542-3682 E-mail: rburns@azcc.gov 12 13 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation 14 Commission and may subject you to further proceedings and penalties under law. 15 Issued this 25 day of August, 2016. 16 Robert L. Burns, Commissioner 17 Arizona Corporation Commission 18 19 20 21 22 23 24 25 Persons with a disability may request a reasonable accommodation such as a sign language interpreter, 26 as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. 27 Requests should be made as early as possible to allow time to arrange the accommodation. 28

ATTAGHMENTA

Documents

- 1) Please provide the FERC Form 1 filed by APS for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 2) Please provide the SEC 10K filed by Pinnacle West for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 3) Please provide Pinnacle West's annual report to shareholders for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 4) Please provide transcripts of Pinnacle West's quarterly earnings calls for 2011, 2012, 2013, 2014, 2015, and 2016.
- 5) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's use of APS's name or brand.
- 6) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's expenditures or donations of funds for any purpose under APS's name or brand.
- 7) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing the APS Foundation's expenditures or donations of funds for any purpose under APS's name or brand.
- 8) Please provide an organizational chart illustrating the officers, directors and managers for APS.
- Please provide an organizational chart illustrating the officers, directors and managers for Pinnacle West.

For 2011, please provide written responses to the following:

- For calendar year 2011, please list each charitable contribution made by APS. Please
 indicate to whom the contribution was made, the amount of the contribution, the date, and the
 purpose.
- 2) For calendar year 2011, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2011, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2011, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2011. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2012, please provide written responses to the following:

- For calendar year 2012, please list each charitable contribution made by APS. Please
 indicate to whom the contribution was made, the amount of the contribution, the date, and the
 purpose.
- 2) For calendar year 2012, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2012, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2012, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2012. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2013, please provide written responses to the following:

- 1) For calendar year 2013, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2013, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2013, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2013, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2013. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2014, please provide written responses to the following:

- 1) For calendar year 2014, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2014, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2014, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2014, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix

Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2014. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2015, please provide written responses to the following:

- 1) For calendar year 2015, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2015, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2015, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2015, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2015. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2016, please provide written responses to the following:

- For year to date 2016, please list each charitable contribution made by APS. Please
 indicate to whom the contribution was made, the amount of the contribution, the date, and the
 purpose.
- 2) For year to date 2016, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For year to date 2016, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

- 4) For year to date 2016, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

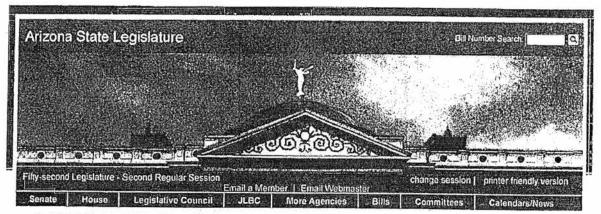
Affiliated Interests-Please provide written responses to the following:

- 1) Please provide a list of all charitable donations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.
- 2) Please provide a list of all donations for political purposes made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.
- 3) Please provide a list of all expenditures to 501(c)(3) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.
- 4) Please provide a list of all expenditures to 501(c)(4) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.
- 5) Please list each marketing/advertising expenditure made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 6) Please describe any foundations or other entities (formed for charitable or other philanthropic purposes) that are related to APS and/or Pinnacle West. Please describe how these entities are funded. Please describe the arrangements governing the Foundation's use of APS's name or brand.
- 7) Please see the attached press releases from Pinnacle West, APS, and the APS Foundation (Attachment C). Please describe the relationships between these organizations. For example,

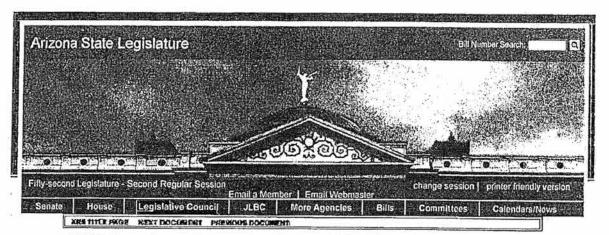
Alan Bunnell is listed as a media contact for all three organizations. Please indicate which entity he works for and which entity pays his salary.

ATTACHMENT B

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4. Power to inspect and investigate
Section 4. The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several 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.



40-241. Power to examine records and personnel of public service corporations; filing record of examination

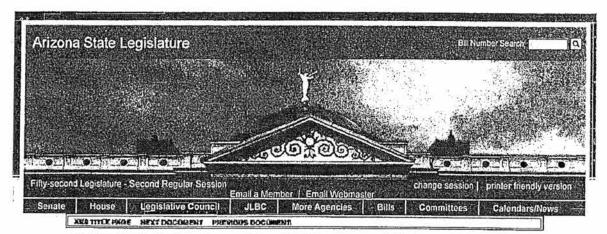
A. The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.

B. Any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make the inspection.

to make the inspection.

C. A written record of such testimony or statement given under oath shall be made and filed with the commission.

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40-243. Conduct of hearings and investigations; representation by corporate officer or

employee; arbitration
A. All hearings and investigations before the commission or a commissioner shall be governed by this article, and by rules of practice and procedure adopted by the commission. Neither the commission nor a commissioner shall be bound by technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony before the commission or a commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

B. In a hearing or rehearing conducted pursuant to this article, a public service corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

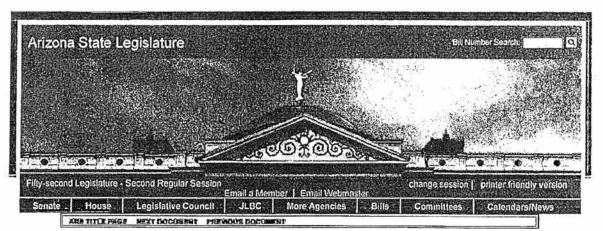
The corporation has preprintly supported the efficer or employee who

1. The corporation has specifically authorized the officer or employee to represent it.

2. The representation is not the officer's or employee's primary duty for the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

C. The commission may adopt or administer arbitration procedures to resolve complaints or disputes brought by a party against a telecommunications company, except that the commission shall not subject a wireless provider to arbitration unless the wireless provider and customer consent in writing. This section does not prohibit the commission from arbitrating disputes or complaints against a wireline service provider, involving telecommunications services contained in the bundle of services, to the extent the commission has jurisdiction as authorized pursuant to this chapter.

articles awards en agencie



40-244. Administration of oaths and certification to official acts by commissioners; taking of depositions; witness fees and mileage.

A. Each commissioner may administer oaths and certify to all official acts. The

commission, or a commissioner, or any party, may take depositions as in a court of

R. Each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance, and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

Wasiew : Arizona Court Rules

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16 A.R.S. Rules of Civil Procedure, Rule 45

Rule 45. Subpoena

Currentness

- (a) Form; Issuance.
- (1) General Requirements. Every subpoena shall:
 - (A) state the name of the Arizona court from which it is issued;
 - (B) state the title of the action, the name of the court in which it is pending, and its civil action number;
 - (C) command each person to whom it is directed to do the following at a specified time and place:
 - (i) attend and give testimony at a hearing, trial, or deposition; or
 - (ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or
 - (iii) permit the inspection of premises, and
- (D) be substantially in the form set forth in Rule 84, Form 9.
- (2) Issuance by Clerk. The clerk shall issue a signed but otherwise blank subpoena to a party requesting it, and that party shall complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court of Arizona.
- (b) For Attendance of Witnesses at Hearing, Trial or Deposition; Objections.
- (1) Issuing Court. A subpoena commanding a person to attend and give testimony at a hearing or trial shall issue from the superior court for the county in which the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding a person to attend and give testimony at a deposition shall issue from the superior court for the county in which the case is pending.
- (2) Combining or Separating a Command to Produce or to Permit Inspection. A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be joined with a command to attend and give testimony at a hearing, trial, or deposition, or may be set out in a separate subpoena.
- (3) Place of Appearance.
- (A) Trial Subpoena. Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding a person to attend and give testimony at a trial may require the subpoenaed person to travel from anywhere within the state.
- (B) Hearing or Deposition Subpoena. A subpoena commanding a person who is neither a party nor a party's officer to attend and give testimony at a hearing or deposition may not require the subpoenaed person to travel to a place other than:
 - (i) the county in which the person resides or transacts business in person;
 - (ii) the county in which the person is served with a subpoena, or within forty miles from the place of service; or
- (iii) such other convenient place fixed by a court order.
- (4) Command to Attend a Deposition—Notice of Recording Method. A subpoena commanding a person to attend and give testimony at a deposition shall state the method for recording the testimony.
- (5) Objections; Appearance Required. Objections to a subpoena commanding a person to attend and give testimony at a hearing, trial, or deposition shall be made by timely motion in accordance with Rule 45(e)(2). Unless excused from doing so by the party or

attorney serving a subpoena, by a court order, or by any other provision of this Rule, a person who is properly served with a subpoena is required to attend and give testimony at the date, time and place specified in the subpoena.

- (c) For Production of Documentary Evidence or for Inspection of Premises; Duties in Responding to Subpoena; Objections; Production to Other Parties.
- (1) Issuing Court. If separate from a subpoena commanding a person to attend and give testimony at a hearing, trial or deposition, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, shall issue from the superior court for the county in which the production or inspection is to be made.
- (2) Specifying the Form for Electronically Stored Information. A subpoena may specify the form or forms in which electronically stored information is to be produced.
- (3) Appearance Not Required. A person commanded to produce documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena commands the person to attend and give testimony at a hearing, trial or deposition.
- (4) Production of Documents. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (5) Objections.
 - (A) Form and Time for Objection.
 - (i) A person commanded to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, may serve upon the party or attorney serving the subpoena an objection to producing, inspecting, copying, testing or sampling any or all of the designated materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested. The objection shall set forth the basis for the objection, and shall include the name, address, and telephone number of the person, or the person's attorney, serving the objection.
 - (ii) The objection shall be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.
 - (iii) An objection also may be made to that portion of a subpoena that commands the person to produce and permit inspection, copying, testing, or sampling if it is joined with a command to attend and give testimony at a hearing, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony at the date, time and place specified in the subpoena.
- (B) Procedure After an Objection Is Made.
- (i) If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance with those portions of the subpoena that are subject to the objection, except pursuant to an order of the issuing court.
- (ii) The party serving the subpoena may move for an order under Rule 37(a) to compel compliance with the subpoena. The motion shall comply with Rule 37(a)(2)(C), and shall be served on the subpoenaed person and all other parties in accordance with Rule 5(c).
- (iii) Any order to compel entered by the court shall protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.
- (C) Claiming Privilege or Protection.
- (i) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (ii) If a person contends that information that is subject to a claim of privilege or of protection as trial-preparation material has been inadvertently produced in response to a subpoena, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.
- (6) Production to Other Parties. Unless otherwise stipulated by the parties or ordered by the court, documents, electronically stored information and tangible things that are obtained in response to a subpoena shall be made available to all other parties in accordance with Rule 26.1(a) and (b).
- (d) Service.
- (1) General Requirements; Tendering Fees. A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

- (2) Exceptions to Tendering Fees. When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or any of its officers or agencies, fees and mileage need not be tendered.
- (3) Service on Other Parties. A copy of every subpoena shall be served on every other party in accordance with Rule 5(c).
- (4) Service within the State. A subpoena may be served anywhere within the state.
- (5) Proof of Service. Proving service, when necessary, requires filing with the clerk of the court of the county in which the case is pending a statement showing the date and manner of service and of the names of the persons served. The statement must be certified by the person who served the subpoena.
- (e) Protection of Persons Subject to Subpoenas; Motion to Quash or Modify
- (1) Avoiding Undue Burden or Expense; Sanctions. A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The issuing court shall enforce this duty and impose upon the party or attorney who breaches this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.
- (2) Quashing or Modifying a Subpoena.
- (A) When Required. On the timely filling of a motion to quash or modify a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued shall quash or modify the subpoena if:
 - (i) it fails to allow a reasonable time for compliance;
- (ii) it commands a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 45(b)(3)(B);
- (iii) it requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) it subjects a person to undue burden.
- (B) When Permitted. On the timely filing of a motion to quash or modify a subpoena, and to protect a person subject to or affected by a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued may quash or modify the subpoena if:
 - (i) it requires disclosing a trade secret or other confidential research, development, or commercial information;
 - (ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;
- (III) It requires a person who is neither a party nor a party's officer to incur substantial travel expense; or
- (iv) justice so requires.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:
 - (i) If the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.
- (D) Time for Motion. A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena Is served, whichever is earlier.
- (E) Service of Motion. Any motion to quash or modify a subpoena shall be served on the party or the attorney serving the subpoena in accordance with Rule 5(c). The party or attorney who served the subpoena shall serve a copy of any such motion on all other parties in accordance with Rule 5(c).
- (f) Contempt. The issuing court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).
- (g) Failure to Produce Evidence. If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.

Credits

Amended July 17, 1970, effective Nov. 1, 1970; July 6, 1983, effective Sept. 7, 1983; Sept. 15, 1987, effective Nov. 15, 1987; Oct. 9, 1996, effective Dec. 1, 1996; June 9, 2005, effective Dec. 1, 2005; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 2, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

16 A. R. S. Rules Civ. Proc., Ruie 45, AZ ST RCP Rule 45 Current with amendments received through 07/01/16

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ATTACHMENT C



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FOR IMMEDIATE RELEASE

Media Contact:

Alan Bunnell, 602-250-3376

Website:

aps.com/newsroom

January 25, 2015 Page 1 of 2

APS INVESTED MORE THAN \$10 MILLION IN ARIZONA NONPROFITS IN 2015

PHOENIX – For more than 125 years, APS has understood that – as one of the only large corporations headquartered in the state – the company has a responsibility to not only provide reliable energy service to its 1.2 million customers, but to strengthen and empower the communities it serves. This belief is embedded in the culture of the company, and starts at the top.

APS announced today that its 2015 community investment in Arizona totaled more than \$10 million. This amount includes grants, sponsorships, and in-kind donations from APS and the <u>APS Foundation</u> to nonprofit organizations and educators throughout the state. In addition, APS employees donated more than 123,000 hours in volunteer time to Arizona nonprofits, an economic impact of \$2.8 million.

"Our long history in the state has shown us that the success of APS is closely tied to the prosperity and health of the communities we serve," said <u>Don Brandt</u>, Chairman, President and CEO of APS. "We are committed to empowering nonprofits to do what they do best, and supporting education programs that will benefit our state's future leaders for years to come. This commitment is ingrained in our culture, and radiates through all of our 6,400 employees."

Among the nonprofits who received grants and contributions from APS and the APS Foundation in 2015:

- The Arizona Science Center received a grant for \$415,500 to support education programs
 throughout the state. The Science Center's Rural Communities Education Program targets
 educators from rural school districts, bringing professional development opportunities to STEM
 teachers across the state. Additional support also was designated for new exhibits.
- The Arizona Hispanic Chamber of Commerce Foundation received a grant for \$250,000 for the Ed and Verma Pastor Legacy Scholarship Program. This scholarship will benefit Latino students majoring in a STEM or a public policy field at any public university or college in Arizona.
- MIND Research Institute received a \$200,000 grant to expand its ST Math program and to
 partner with ASU to implement a professional development exploratory study with Englishlanguage learner students. These programs will expand Innovative teaching to low-income
 students throughout Arizona and will train teachers to use a visual approach that deepens
 students' problem-solving and reasoning skills, helping them advance their mathematical
 knowledge.
- UMOM New Day Centers received a grant for \$150,000 to meet the needs of homeless women
 and families in Maricopa County. The funds will enable UMOM to provide comprehensive
 services, including housing, healthcare, vocational training and job placement, substance abuse
 counseling and housing service for residents while they focus on their case plan to end their
 homelessness.

- The Phoenix Symphony Association received \$225,000 from APS to deliver relevant and
 entertaining content to a broad range of constituencies and provide civic value through
 programs that benefit the needs of the community and foster a culture of creativity and
 innovation.
- The Navajo United Way received a grant for \$100,000 for its Operation Yellow Water Challenge Match. The Navajo United Way is working to ensure that farmers and communities impacted by the closure of the San Juan River, due to toxic waste contamination in August 2015, receive the support they need to Irrigate fields and continue their livelihood.
- The Phoenix Art Museum received an \$85,000 grant to support exhibitions, education and The James K. Ballinger American Art and Education Fund.

In addition, in 2015 the APS Foundation supported programs that enhance academic achievement in the areas of Science, Technology, Engineering and Math (STEM):

- Arizona Science Teachers Association received a grant for \$86,000 for its Teacher Leadership Program.
- ASU Foundation for a New American University received a grant for \$80,000 for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers.
- Lowell Observatory received a \$56,500 grant for its Navajo-Hop! Astronomy Outreach Program.
- The Society of St. Vincent de Paul received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology through instruction in STEM subjects.
- The Southern Arizona Research Science and Engineering Foundation (SARSEF) received a \$50,000 grant to bring STEM education for students and teachers to 50 schools in low-income, rural areas.
- Teach for America Inc. received a grant of \$50,000 for its Math/Science Initiative, which recruits
 highly qualified individuals to teach math and science in low-income schools and provides
 preparation and support to enhance teacher effectiveness.

About APS Foundation

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 to \$2.5 million per year through a bi-annual grant process. Since its inception, the Foundation has invested nearly \$35 million in Arizona nonprofits. For more information, please visit aps.com/corporategiving and click on the Foundation link.

About APS

APS, Arizona's largest and longest-serving electricity utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of <u>Pinnacle West Capital Corp.</u> (NYSE: PNW).



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FOR IMMEDIATE RELEASE

Media Contacts:

Jim McDonald (602) 250-3704

(602) 250-3704

Analyst Contact:

Alan Bunnell Ted Geisler

(602) 250-3200

Website:

aps.com/newsroom

APS ANNOUNCES EXECUTIVE CHANGES AT PALO VERDE

Edington transitioning to advisory role; Bement, Cadogan promoted

PHOENIX – Arizona Public Service announced today changes in its senior leadership team at the Palo Verde Nuclear Generating Station. Bob Bement has been appointed Executive Vice President, Nuclear and will continue to report to Randy Edington, Executive Vice President and Chief Nuclear Officer. Jack Cadogan, currently Vice President, Nuclear Engineering, has been named to replace Bement as Senior Vice President, Site Operations. Maria Lacal will continue to serve as Senior Vice President, Regulatory and Oversight. Cadogan and Lacal will report to Bement.

On October 31, Bement will take over as Executive Vice President and Chief Nuclear Officer while Edington shifts to Executive Vice President and Advisor to the CEO.

"I want to thank Randy Edington for his great service to our customers, our company and our state over the past nine years," said <u>Don Brandt</u>, APS Chairman, President and Chief Executive Officer. "When Randy arrived, Palo Verde faced difficult regulatory and operational challenges. He put together a great team, which included Bob Bement, and more quickly than anyone thought possible, restored confidence and operational excellence at the plant. I am proud to say that under Randy's leadership, Palo Verde has become a model for other plants nationally and around the world as one of the best in the industry."

In 2015, Palo Verde generated a record 32.5 million megawatt-hours of carbon-free electricity, marking the 24th consecutive year the plant was the nation's largest power producer. Palo Verde remains the only U.S. generating facility to ever produce more than 30 million megawatt-hours in a year – an operational accomplishment the plant has achieved each of the past seven years and a total of 11 times. In addition, Palo Verde produces 80 percent of Arizona's clean electricity, displacing more than 13.2 million metric tons of greenhouse-gas emissions that would otherwise have been produced to power homes and businesses from Texas to California.

Bement has led the day-to-day nuclear operations at Palo Verde for the past nine years. Prior to joining APS shortly after Edington's arrival in 2007, he held senior nuclear leadership positions at Exelon and with Arkansas Nuclear One and began his nuclear career in the United States Navy as a nuclear-trained electrician.

"Bob Bement has served side-by-side with Randy at Palo Verde almost from Randy's first day at APS. Bob understands the plant culture and was essential in Palo Verde's return to excellence," said Brandt. "Randy and I have always agreed that the true measure of a leader is the organization's ability to excel after that leader is gone. In Bob, we have the ideal successor to continue Randy's outstanding work and to ensure Palo Verde's enduring industry leadership."

Cadogan, who has served as Palo Verde's vice president of nuclear engineering since 2012, will assume Bement's former responsibilities overseeing site operations. Cadogan joined APS in 2009 as director of engineering support before being promoted to director of plant engineering in 2011. In his most recent role, he has been responsible for plant design and project engineering, as well as the nuclear fuels function. Prior to joining APS, Cadogan spent 30 years in the energy industry, holding numerous positions in power plant operations support, design and construction.

Palo Verde is operated by <u>APS</u> and jointly owned by APS, Salt River Project, El Paso Electric Co., Southern California Edison Co., Public Service Co. of New Mexico, Southern California Public Power Authority and the Los Angeles Department of Water & Power.

APS, Arizona's largest and longest-serving electric utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of <u>Pinnacle West Capital Corp.</u> (NYSE: PNW).

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Alan Bunnell, (602) 250-3376

Media Contact: Analyst Contact:

Website:

Paul Mountain, (602) 250-4952

pinnaclewest.com

April 29, 2016 Page 1 of 4

PINNACLE WEST REPORTS 2016 FIRST-QUARTER EARNINGS

- Results in line with the company's expectations; full-year 2016 earnings guidance affirmed
- · Major planned fossil power plant outages increase operations and maintenance expenses versus a year ago
- Retail sales continue to improve as Arizona's economy continues post-recession growth

PHOENIX -- Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$4.5 million, or \$0.04 per diluted share of common stock, for the quarter ended March 31, 2016. This result compares with \$16.1 million, or \$0.14 per diluted share, for the same period in 2015.

"Financial results were in line with our expectations, especially given the major fossil power plant overhauls and maintenance work that we had built into our budget," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "We remain optimistic that we will achieve our annual targets as customer and electricity sales growth continue to rebound, along with Arizona's Improving economy."

Brandt cited a recent study by the U.S. Census Bureau that indicates the Phoenix-metropolitan area is the third-fastest growing of the top 15 metro areas in the U.S. A second report by Arizona's Office of Employment and Population Statistics shows the state has formally matched its pre-recession employment levels, amid expectations of continued solid growth in both population and jobs.

Looking to the immediate future, Brandt added that the company is focused on achieving constructive regulatory outcomes on a number of key energy policy issues, including Arizona's value and cost of distributed generation proceeding, as well as the company's upcoming rate case. "We will continue working with various stakeholders to achieve fair policies that benefit all our customers - and that help ensure a sustainable energy future for all of Arizona," he said.

The 2016 first-quarter results comparison was adversely impacted by increased operations and maintenance expenses, which decreased results by \$0.17 per share compared with the prioryear period. The expense increase was largely comprised of higher fossil plant maintenance costs as a result of more planned work being completed in the 2016 first quarter compared to the 2015 first quarter.

The above costs were partially offset by the following items:

- The effects of weather variations improved results by \$0.02 per share compared to the
 year-ago period despite temperatures that remained less favorable than normal. While
 residential heating degree-days (a measure of the effects of weather) were 57 percent
 higher than last year's first quarter, heating degree-days were still 18 percent below
 normal 10-year averages. A contributing factor was that February 2016 was the thirdmildest February in the last 20 years and the fifth-mildest over the last 40 years.
- Increased retail transmission revenue positively impacted earnings by \$0.02 per share.
- Higher retail electricity sales excluding the effects of weather variations, but including
 the effects of customer conservation, energy efficiency programs and distributed
 renewable generation improved earnings \$0.01 per share. Compared to the same
 quarter a year ago, weather-normalized sales increased 1.3 percent (partly the result of
 an additional day of sales due to the leap year), while total customer growth improved
 1.3 percent quarter-over-quarter.
- The net effect of miscellaneous items increased earnings \$0.02 per share.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the first-quarter 2016 earnings presentation slides on the Company's website at plnnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West Invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 first-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, April 29. A replay of the webcast can be accessed at pinnaclewest.com/presentations. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Friday, May 6, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13634257.

General Information

<u>Pinnacle West Capital Corp.</u>, an energy holding company based in Phoenix, has consolidated assets of approximately \$15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, <u>Arizona Public Service</u>, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at <u>pinnaclewest.com</u>.

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit <u>pinnaclewest.com/investors</u>.

NON-GAAP FINANCIAL INFORMATION

In this press release, we refer to "on-going earnings." On-going earnings is a "non-GAAP financial measure," as defined in accordance with SEC rules. We believe on-going earnings provide investors with useful indicators of our results that are comparable among periods because they exclude the effects of unusual items that may occur on an irregular basis. Investors should note that these non-GAAP financial measures involve judgments by management, including whether an item is classified as an unusual item. We use on-going earnings, or similar concepts, to measure our performance internally in reports for management.

FORWARD-LOOKING STATEMENTS

This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining high reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- · power plant and transmission system performance and outages;
- · competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
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- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, and in Part II, Item 1A of the Pinnacle West/APS Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

PINACLE WEST | EWS

FOR IMMEDIATE RELEASE

Media Contact: Analyst Contacts: Alan Bunnell Ted Geisler (602) 250-3376 (602) 250-3200

Chalese Haraldsen

(602) 250-5643

Website:

pinnaclewest.com

August 2, 2016 Page 1 of 4

PINNACLE WEST REPORTS 2016 SECOND-QUARTER RESULTS

- Hotter-than-normal weather positively impacted quarterly results
- Residential sales and customer growth improved as Arizona's economy keeps expanding
- Investments in planned fossil power plant maintenance and higher benefit costs contributed to increased O&M expenses versus a year ago
- Full-year 2016 earnings guidance maintained

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$121.3 million, or \$1.08 per diluted share of common stock, for the quarter ended June 30, 2016. This result compares with earnings of \$122.9 million, or \$1.10 per share, in the same 2015 period.

"Hotter-than-normal weather – led by the warmest June on record – positively impacted our earnings compared to the year-ago period," said Pinnacle West Chairman, President and Chief Executive Officer <u>Don Brandt</u>. "The favorable weather helped partially offset an increase in operations and maintenance expenses at a time when we are investing significant resources in planned fossil power plant overhauls and maintenance, as well as new customer information and outage management systems that will improve operational efficiencies, enhance reliability, and create a modernized energy system for all our customers."

In total, O&M expenses during the 2016 second quarter decreased results by \$0.19 per share compared with the prior-year-period. Quarter-over-quarter impacts primarily included the previously mentioned increase in planned fossil plant maintenance and higher employee benefit costs.

The favorable weather contributed \$0.09 per share to the company's bottom line compared to the year-ago period. Highlighted by record June heat, which helped offset a relatively mild April and May, the average high temperature in the 2016 second quarter was 94.5 degrees, while the average high temperature in the same period a year ago was 94.2 degrees. As a result, residential cooling degree-days (a measure of the effects of weather) were 4 percent higher than last year's second quarter, which was impacted by mild weather and one of the coolest Mays on record. Cooling degree-days also were more than 2 percent better than normal 10-year historical averages.

In addition to the effects of weather, the 2016 second-quarter results comparison was positively influenced by the following major factors:

- Higher retail electricity sales excluding the effects of weather variations, but including
 the effects of customer conservation, energy efficiency programs and distributed
 renewable generation improved results \$0.04 per share. Underlining an improving
 Arizona economy, total customer growth was 1.4 percent quarter-over-quarter, and
 mirrors recent census population data that indicates Phoenix is one of the five fastestgrowing cities in the U.S.
- Adjustment mechanisms improved earnings by \$0.04 per share compared to the 2015 second quarter. These adjustors included an increase in transmission revenues; revenue from the Company's AZ Sun Program; and higher lost fixed cost recovery (LFCR) revenue.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the second-quarter 2016 earnings presentation slides on the Company's website at pinnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West Invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 second-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, August 2. The webcast can be accessed at pinnaclewest.com/presentations and will be available for replay on the website for 30 days. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Tuesday, August 9, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13639544.

<u>Pinnacle West Capital Corp.</u>, an energy holding company based in Phoenix, has consolidated assets of more than \$15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, <u>Arizona Public Service</u>, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at <u>pinnaclewest.com</u>.

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit <u>pinnaclewest.com/investors</u>.

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- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- · fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
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FOR IMMEDIATE RELEASE

February 3, 2016

Page 1 of 2

Media Contact:

Alan Bunnell, 602-250-3376

Website: aps.com/newsroom

APS FOUNDATION AWARDS OVER \$2.9 MILLION IN 2015 TO NONPROFITS WITH A FOCUS ON STEM EDUCATION IN ARIZONA

PHOENIX – The APS Foundation is proud to be one of the leading supporters of science, technology, engineering and math (STEM) education in Arizona. Since 2012, the APS Foundation has focused its giving on STEM programs to benefit the state's students and teachers. In 2015, the Foundation distributed more than \$2.9 million to nonprofits across Arizona.

"APS is committed to supporting the outstanding organizations doing great work throughout Arizona, particularly in the area of STEM education," said Tina Marie Tentori, Executive Director of the APS Foundation. "Arizona jobs will increasingly depend on science, technology, engineering and math skills. These are the areas of study that drive today's global economy."

The first round of education grants was provided in June 2015 and totaled \$1.4 million to 17 organizations.

Nonprofits receiving grants from the APS Foundation for STEM-related programs in the Foundation's second round of grants for 2015 included:

- Arizona Science Teachers Association received a grant for \$86,000 for its Teacher Leadership
 Program, which provides access to professional development focused on research-based
 practices almed at increasing student achievement, building and maintaining the leadership of
 Arizona science educators and providing resources and information for effective science
 education for students.
- Valley of the Sun United Way received an \$84,000 grant (the first of a three-year, \$250,000 commitment) for its Thriving Together program, a cross-sector collaboration working together to improve academic achievement in Arizona.
- ASU Foundation for a New American University received two grants totaling \$104,000. ASU
 Foundation received \$24,000 for its ExSciTEM (Exploring Science, Technology, Engineering and
 Math) program at ASU West and an \$80,000 grant for its STEMSS (Science, Technology,
 Engineering, Math and Social Studies) Summer Institute for K-12 teachers. This 10-day institute
 trains teachers how to integrate STEMSS across the curriculum through content lectures, handson activities, participation in science field studies and visits to local corporations showing STEM
 in practice.
- Lowell Observatory received a \$56,500 grant for its Navajo-Hopi Astronomy Outreach Program, now in its 10th year. The program pairs a professional astronomer from Lowell with fifth through eighth grade reservation teachers for one school year. Astronomers visit the partner classroom to lead science discussions and hands-on activities in collaboration with the local teacher. Students also take a field trip to Lowell.

- The Society of St. Vincent de Paul received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology in STEM subjects.
- The Southern Arizona Research Science and Engineering Foundation received a \$50,000 grant to bring STEM education to 50 schools in low-income rural areas.
- Southwest Autism Research and Resource Center (SARRC) received a \$50,000 grant to expand
 the number of teachers and clinicians educating Arizona's autism population and supporting the
 educators and districts working with them.
- West-MEC Alliance received a \$50,000 grant for the APS Discover What's Within Program, which will enrich West-MEC's Southwest Campus with STEM programming.
- Science Foundation Arizona received \$25,000 for its Navajo Code Writers STEM Initiative, a
 program that will introduce computer code writing curriculum to prepare Navajo students for
 the global economy.
- Experience Matters Consortium Inc. received a \$15,500 grant for its Volunteers in Preparing Students for Success program that provides education and STEM career guidance to low-income high school students.
- Yavapai College Foundation received \$8,200 for College for Kids, a summer educational program providing STEM classes for children aged 5-17.
- Boys & Girls Club of Greater Scottsdale received a grant for \$6,500 for Its Da Vinci Disciples and Johnny 5 Alive STEM-based programs.
- Treasures 4 Teachers received a \$5,000 grant to STEM educational kits for hands-on classroom projects.

Videos showcasing STEM success stories resulting from APS Foundation STEM investment can be viewed at aps.com/next.

About APS Foundation

The APS Foundation is committed to making a deep impact in Arizona communities and does so through supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 million to \$2.5 million per year through a bi-annual grant process. Since its inception, it has invested nearly \$38 million in Arizona nonprofits. For more information, please visit www.aps.com/corporategiving and click on the Foundation link.



FOR IMMEDIATE RELEASE

July 18, 2016

Media Contact:

Alan Bunnell (602) 250-3376 or alan.bunnell@aps.com

Website:

aps.com/newsroom

Page 1 of 2

APS FOUNDATION CONTINUES FOCUS ON STEM EDUCATION

More Than \$1.2 Million Awarded in First Round of 2016 Funding

PHOENIX – Fourteen nonprofit organizations located throughout Arizona and the Four Corners area will receive more than \$1.2 million in STEM-supported grants, the APS Foundation announced today. Supporting science, technology, engineering and math (also known as STEM) and other education programs has been the Foundation's principal focus since 2012.

"Arizona is blessed to have a number of local organizations doing impactful work in STEM educational areas," said Tina Marie Tentori, executive director of the APS Foundation. "These grants will help move their efforts forward, including encouraging and preparing Arizona students to pursue future jobs in technology, clean energy and other STEM-related careers."

The following nonprofits received grants from the APS Foundation:

- American Indian College Fund received a \$100,000 grant for a scholarship fund that
 provides financial support to 15 Navajo college students pursuing majors in STEM or
 related fields at Navajo Nation-serving tribal colleges and mainstream universities in
 Arizona and New Mexico, with a particular emphasis around the Four Corners region.
- Arizona Center for Afterschool Excellence received \$5,000 for its annual conference dedicated to training 700 childcare providers throughout Arizona on integrating STEM activities into daily programming.
- Arizona Science Center received a \$385,000 grant to support the continuation of its
 Professional Learning and Development Rural Communities Expansion Project, which
 helps integrate STEM curriculum into rural school districts, including grades 3-8 in
 Cottonwood, Oak Creek, Humboldt, Winslow, Prescott, Sedona, Tonopah, Florence and
 Yuma.
- Flagstaff Chamber of Commerce Foundation received a \$20,000 grant for its Ready.Set.Code. Digital Initiative which introduces area youth and teachers to the various roles and potential careers that make up the digital workplace eco-system.
- HandsOn Greater Phoenix received a \$10,000 grant for its Your Experience Counts academic mentoring program that trains volunteers to work alongside elementary teachers in the classroom, helping with academic improvement in reading, writing, math and science.
- Audubon Arizona received a \$25,000 grant for its River Pathways program, which
 introduces urban youth to environmental science-related careers and gives students
 access to natural resource professionals.
- NTC Research Foundation received a \$108,000 grant for its BrainSTEM program, which brings 45-minute live performances by professional actor/educators to rural schools to introduce STEM principles to low income 5th through 8th graders. The program will reach 20,000 students, 700 teachers and 50 schools.

- Teach for America received a \$50,000 grant for a targeted STEM initiative that will sponsor 10 math and science teachers in Title I schools in the Phoenix metropolitan area.
- Valley of the Sun YMCA received a \$45,000 grant for its STEM Thursdays program, which provides fun, engaging, hands-on group STEM learning projects and encourages low income elementary school students in the Valley, Yuma, Somerton and Flagstaff to pursue STEM careers.
- Arizona Chamber Foundation received a \$100,000 grant for A for Arizona, an initiative to improve and serve K-12 low-income schools throughout Arizona.

Additional organizations receiving grants during this funding cycle include: Arizona State Parks Foundation, Expect More Arizona, Grand Canyon Association and Great Hearts Academies.

The next cycle of APS Foundation grant applications opens on July 15 with a deadline of Sept. 1, 2016. Applications and more information on grant eligibility can be found at www.aps.com/corporategiving and clicking on the Foundation link.

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CERTIFICATION OF SERVICE

On this 25 day of August, 2016, the foregoing document was filed with Docket Control as Correspondence from Commissioner Bob Burns and copies of the foregoing were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

Kurt Boehm BOEHM, KURTZ & LOWRY 36 E. Seventh St. Suite 1510 Cincinnati Ohio 45202

Nicholas J. Enoch LUBIN & ENOCH, PC 349 N. Fourth Ave. Phoenix Arizona 85003

Richard Gayer 526 W. Wilshire Dr. Phoenix Arizona 85003 rgayer@cox.net Consented to Service by Email

Thomas A Loquvam
PINNACLE WEST CAPITOL CORPORATION
400 N. 5Th St, MS 8695
Phoenix, Arizona 85004

Timothy M. Hogan
ARIZONA CENTER FOR LAW IN THE PUBLIC
INTEREST
202 E. McDowell Rd. - 153
Phoenix Arizona 85004
thogan@aclpi.org
ken.wilson@westernresources.org
schlegelj@aol.com
ezuckerman@swenergy.org
bbaatz@aceee.org
briana@votesolar.org
Consented to Service by Email

Cynthia Zwick ARIZONA COMMUNITY ACTION ASSOCIATION 2700 N. Third St. - 3040 Phoenix Arizona 85004 Jay I. Moyes
MOYES SELLERS & HENDRICKS, LTD
1850 N. Central Ave. - 1100
Phoenix Arizona 85004
JasonMoyes@law-msh.com
jimoyes@law-msh.com
jim@harcuvar.com
Consented to Service by Email

Michael Patten
SNELL & WILMER, LLP
One Arizona Center
400 East Van Buren Street
Phoenix Arizona 85004
mpatten@swlaw.com
jhoward@swlaw.com
docket@swlaw.com
BCarroll@tep.com

Consented to Service by Email

Greg Patterson MUNGER CHADWICK 916 W. Adams Suite 3 Phoenix Arizona 85007

Janice Alward ARIZONA CORPORATION COMMISSION 1200 W. Washington Phoenix Arizona 85007

Daniel Pozefsky RUCO 1110 West Washington, Suite 220 Phoenix Arizona 85007

Thomas Broderick ARIZONA CORPORATION COMMISSION 1200 W. Washington St. Phoenix Arizona 85007

Dwight Nodes
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix Arizona 85007-2927
HearingDivision@azcc.gov
Consented to Service by Email

Anthony Wanger IO DATA CENTERS, LLC 615 N. 48th St Phoenix Arizona 85008 Giancarlo Estrada KAMPER ESTRADA, LLP 3030 N. 3rd Street, Suite 770 Phoenix Arizona 85012

Meghan H. Grabel
OSBORN MALADON, PA
2929 N. Central Avenue Suite 2100
Phoenix Arizona 85012
mgrabel@ornlaw.com
gyaquinto@arizonaic.org
Consented to Service by Email

Scott S. Wakefield
HIENTON & CURRY, PLLC
5045 N 12th Street, Suite 110
Phoenix Arizona 85014-3302
swakefield@hclawgroup.com
mlougee@hclawgroup.com
Stephen.chriss@wal-mart.com
Greg.tillman@walmart.com
chris.hendrix@wal-mart.com
Consented to Service by Email

Patrick J. Black
FENNEMORE CRAIG,P.C.
2394 E. Camelback Rd, Ste 600
Phoenix Arizona 85016
wcrocket@fclaw.com
pblack@fclaw.com
khiggins@energystrat.com
Consented to Service by Email

John William Moore, Jr. 1321 North 16th Street Phoenix Arizona 85020

Tom Harris
ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION
2122 W. Lone Cactus Dr. Suite 2
Phoenix Arizona 85027
Tom.Harris@AriSEIA.org
Consented to Service by Email

Craig A. Marks
CRAIG A. MARKS, PLC
10645 N. Tatum Blvd.
Suite 200-676
Phoenix Arizona 85028
Craig.Marks@azbar.org
Pat.Quinn47474@gmail.com
Consented to Service by Email

Court S. Rich ROSE LAW GROUP, PC 7144 E. Stetson Drive, Suite 300 Scottsdale Arizona 85251

Greg Eisert
SUN CITY HOME OWNERS ASSOCIATION
10401 W. Coggins Drive
Sun City Arizona 85351
gregeisert@gmail.com
steven.puck@cox.net
Consented to Service by Email

Albert E. Gervenack
SUN CITY WEST PROPERTY OWNERS & RESIDENTS
ASSOCIAT
13815 Camino Del Sol
Sun City Arizona 85372
al.gervenack@porascw.org
rob.robbins@porascw.org
Consented to Service by Email

Patricia C. Ferre P.O. Box 433 Payson Arizona 85547

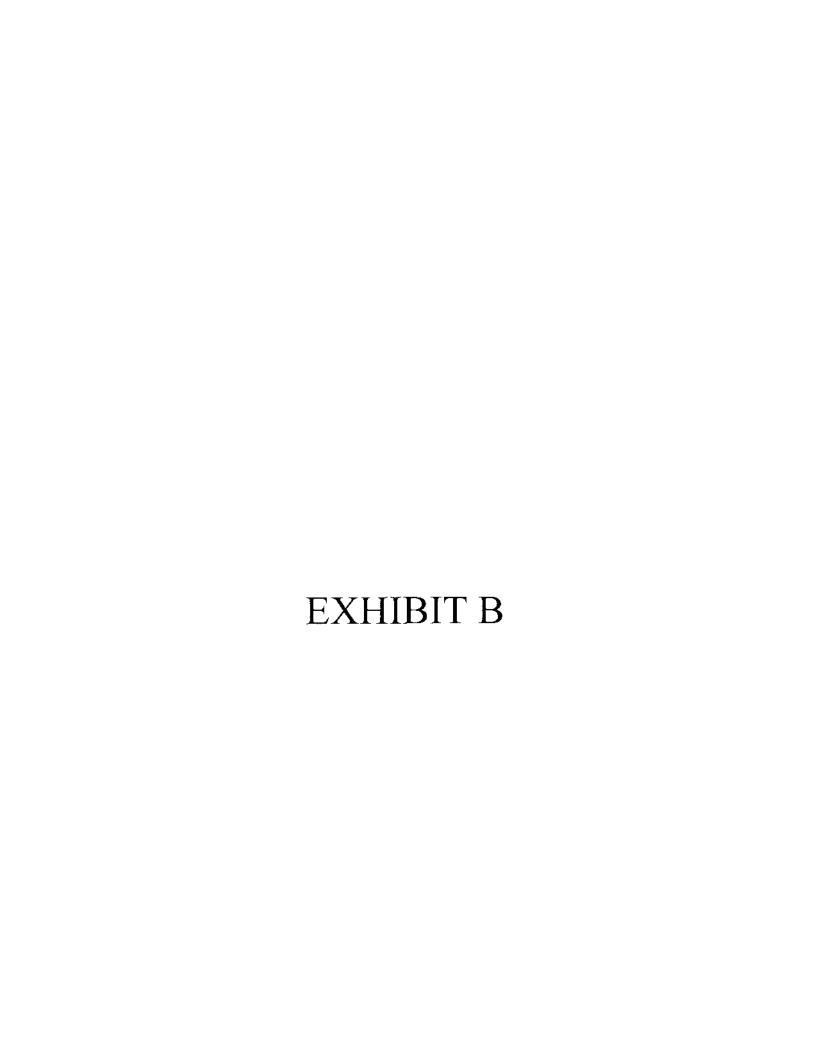
Lawrence V. Robertson, Jr.
PO Box 1448
Tubac Arizona 85646
Charles Wesselhoft
Pima County Attorney's Office
32 North Stone Avenue, Suite 2100
Tucson Arizona 85701
Charles.Wesselhoft@pcao.pima.gov
Consented to Service by Email

Warren Woodward 55 Ross Circle Sedona Arizona 86336 w6345789@yahoo.com Consented to Service by Email

By:

Jessida Perry

Executive Assistant to Commissioner Bob Burns



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1 Mary R. O'Grady, 011434 Joseph N. Roth, 025725 2 OSBORN MALEDON, P.A. 2929 North Central Avenue, 21st Floor 3 Phoenix, Arizona 85012-2793 (602) 640-9000 4 mogrady@omlaw.com 5 jroth@omlaw.com 6 Matthew E. Price (Pro Hac Vice to be filed) JENNER & BLOCK 7 1099 New York Avenue, NW Suite 900 8 Washington, DC 20001-4412 9 (202) 639-6873 mprice@jenner.com 10



SEP 09 2016



MICHAEL K. JEANES, CLERK J. BAKER BEPUTY CLERK

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Arizona Public Service Company, an Arizona public service corporation, and Pinnacle West Capital Corporation, an Arizona corporation,

Plaintiffs,

VS.

Attorneys for Plaintiffs

Commissioner Robert Burns, a member of the Arizona Corporation Commission, in his official capacity,

Defendant.

No. CV 2016-014895

VERIFIED COMPLAINT FOR SPECIAL ACTION AND DECLARATORY JUDGMENT

Plaintiffs Arizona Public Service Company and Pinnacle West Capital Corporation (collectively, the "Companies") for their Complaint against Defendant, allege as follows:

INTRODUCTION

This case involves the latest stage in a year-long campaign of harassment waged by an Arizona Corporation Commissioner against the Companies for their perceived political speech. During the 2014 election cycle, certain 501(c)(4) social welfare organizations made expenditures in connection with Commission elections. Those organizations have not disclosed

their donors under Arizona's campaign finance laws, and there is no suggestion that those organizations violated Arizona law by failing to do so.

Nevertheless, based on speculation that the Companies may have donated to these social welfare organizations, Defendant Commissioner Robert Burns has issued subpoenas (one to APS, and one to Pinnacle West) compelling the Companies to open their books and publicly divulge any political expenditures, charitable contributions, and lobbying expenditures they may have made in the last five years. The subpoenas are attached as **Exhibit 1**.

To Plaintiff's knowledge, the subpoenas are unprecedented. Never before has a single Commissioner, acting without the authority or approval of the Commission and without any allegation of illegality, issued subpoenas compelling two companies to disclose information regarding protected First Amendment activities that Arizona law does not require to be disclosed. The Court should declare that the Commissioner's subpoenas go beyond his lawful authority and enter an order prohibiting him from enforcing them.

PARTIES, JURISDICTION, AND VENUE

- Plaintiff Arizona Public Service Company ("APS") is an Arizona public service corporation that provides either retail or wholesale electric service to a large portion of the State of Arizona.
- Plaintiff Pinnacle West Capital Corporation ("Pinnacle West") is a publicly traded corporation incorporated in Arizona. APS is a wholly-owned subsidiary of Pinnacle West.
- Defendant Commissioner Burns is one of five members of the Arizona Corporation Commission, an entity created by Article XV, Section 1 of the Arizona Constitution.
- 4. This Court has jurisdiction to hear and adjudicate this Complaint for Special Action and to grant the relief requested under Article 6 § 18 of the Arizona Constitution, A.R.S. §§ 12-123 and 12-1831, and Rule 1 of the Arizona Rules of Procedure for Special Actions. Commissioner Burns has asserted authority to act, without the approval or authorization of the

Commission as a whole, to issue and enforce the subpoenas. Plaintiffs are, concurrently with this Complaint, seeking an order from the Arizona Corporation Commission quashing the subpoenas. However, given Commissioner Burns's assertion of authority to issue the subpoenas independent of any Commission action, Plaintiffs seek relief in this Court as well as before the Commission.

- 5. Plaintiffs lack an equally plain, adequate, and speedy remedy because A.R.S. § 40-254 provides for judicial review of Commission actions but does not expressly provide for review of actions taken by a single Commissioner without the approval of the Commission.
- Venue is proper in this Court pursuant to A.R.S. § 12-401(16) and Rule 4 of the
 Arizona Rules of Procedure for Special Actions.

FACTUAL BACKGROUND

- Commissioner Burns Requests That APS and Pinnacle West Voluntarily Abstain from Engaging in Protected First Amendment Activity.
- 7. On September 8, 2015, Commissioners Burns and Bitter Smith publicly issued a joint letter "request[ing] that all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." [Letter from Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015). Exhibit 2.]
- 8. After emphasizing "APS's alleged contributions to political campaigns," the letter "acknowledge[d] that public service corporations have a First Amendment right to support the candidates of their choice" and that "this constitutional right carries with it the right to contribute to political campaigns."
- 9. The letter also conceded that the "laws governing campaign finance are not within the Commission's purview" and "at the present time, there do not appear to be assertions that Pinnacle West, APS or others have failed to comply with any applicable campaign finance laws."

- 10. Nonetheless, Commissioners Burns and Bitter Smith asserted that they personally "view it as unacceptable and inappropriate for public service corporations or others to make campaign contributions in support of or in opposition to any candidate for the Corporations Commission." According to the letter, this was because such contributions could negatively affect how the public perceived the Commission.
- 11. On October 23, 2015, the Companies responded to Commissioners Burns's "unusual" and "unprecedented" request and respectfully declined "to forfeit any of their First Amendment rights to speak on public issues." Noting the long-standing First Amendment protection for corporations to engage in political speech, the Companies expressed concern over "a request from governmental officials with great authority over APS to relinquish one means of expression of this right." The Companies also highlighted that Commissioner Burns's request would place APS at a severe disadvantage in the marketplace of ideas because "significant political expenditures will undoubtedly be made by others" who are not regulated by the Commission but who "have strong economic interests in Commission decisions." [Letter from Donald E. Brandt at 1-3, Docket No. AU-00000A-15-0309 (Oct. 23, 2015). Exhibit 3.]

II. Commissioner Burns Requests Records of Campaign Contributions to Confirm That Ratepayer Funds Are Not Used for Political Speech.

12. Commissioner Burns pressed ahead with his investigation into the Companies. On November 30, 2015, he sent another letter stating that "in my opinion, your support for any particular candidate should be open and transparent." Based on that personal view about what Arizona should (but does not) require, Commissioner Burns "ask[ed] APS to provide my office with a full report of all spending related in any way to the 2014 election cycle." The ostensible purpose of the inquiry was "to find out if APS has spent ratepayer money to support or oppose the election of Arizona Corporation Commission candidates" and "to ensure that only APS's profits are being used for political speech." [Letter from Commissioner Burns 1, Docket No. AU-00000A-15-0309 (Nov. 30, 2015). Exhibit 4.]

- 13. It would be impossible for APS to recover any 2014 political expenditures from ratepayers, because (as explained in ¶¶ 36-47 below) its rates were set based on APS's expenses in 2010, and because there is already an audit process in place, through APS's general rate case, to ensure that political expenditures cannot be charged to customers in rates.
- 14. APS responded on December 29, 2015, confirming that "any political contribution made by a public service corporation is not treated as an operating expense recoverable in rates." [Letter from Donald E. Brandt 1, Docket No. AU-00000A-15-0309 (Dec. 29, 2015). Exhibit 5.]
- III. Undeterred, Commissioner Burns Broadens His Inquiry After APS Declined to "Voluntarily" Pledge to Compromise Its First Amendment Rights.
- 15. Apparently frustrated that the Companies would not agree to "voluntarily" be cajoled into silence, on January 28, 2016, Commissioner Burns sent another letter that "embark[ed] upon the next stage of my inquiry into APS's possible campaign contributions" in the 2014 election cycle. [Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28, 2016). Exhibit 6.]
- 16. The January 28 letter stated that the investigation was prompted by the fact that APS had "rejected [the] proposal" to "voluntarily agree to refrain from making political contributions ... in the upcoming election cycle," and then had declined to "provide a report listing any campaign contributions ... by APS in 2014."
- 17. Commissioner Burns announced his intent "to broaden my inquiry to include funds expended on all political contributions, lobbying, and charitable contributions, *i.e.* all donations made—either directly or indirectly—by APS or under APS's brand name for any purpose."
- 18. Commissioner Burns did not, however, take any further action at that time, and APS did not respond to the January 28 letter.
- 19. During an April 12, 2016, Commission meeting, Commissioner Burns threatened to use his vote as a Commissioner as a "tool" to force APS's compliance with his

demands. Specifically, he stated, "All votes of this Commission are a tool to be used," and that he "will not support any further action items requested by APS with the exception of an item that might have health or safety components" until APS complied with his demands. [Transcript of Open Meeting 12-13 (Apr. 12, 2016). **Exhibit 7**.]

- 20. Commissioner Burns's campaign website continues to advertise, as part of a "[t]imeline of my battle with APS," that he announced in April that he "refuses to vote for APS items until company discloses 'dark money' ties." [Commissioner Bob Burns website. Exhibit 8.]
- IV. Commissioner Burns Issues Subpoenas to the Companies and Demands a Deposition of the Companies' CEO.
- 21. Commissioner Burns' next move was to use the power of his office to force the Companies to capitulate to his demands. Commissioner Burns timed the next stages of his harassment of the Companies to coincide with pivotal points of his 2016 re-election campaign, the first of which was the Republican primary on August 30, 2016.
- 22. At the same time, it was reported publicly that a 501(c)(4) organization, funded by one or more parties appearing before the Commission, had begun spending money to support Commissioner Burns's re-election.
- 23. Commissioner Burns first sought to use Commission resources to retain an attorney for the purpose of investigating campaign expenditures in Commissioner elections.
- 24. Commissioner Burns explained that his investigation was designed to prevent "utility overspending and overparticipating, if you will, in the elections of Corporation Commissioners." [Transcript of Open Meeting 49 (Aug. 11, 2016). Exhibit 9.]
- 25. At the Commission's August 11 open meeting, the Commission declined to authorize the expenditure of funds for such an investigation. [Id.]
- 26. Having failed to convince the Commission to bankroll his investigation, on August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of this

- 30. In addition, Commissioner Burns seeks to compel the Companies' CEO Donald Brandt to appear for testimony on October 6, 2016, regarding the topics covered in the subpoenas.
- 31. The date October 6, 2016, has no relevance to any proceeding before the Commission, but it is six days before early voting begins for the November general election.
- 32. The Companies' CEO is not the appropriate, most knowledgeable corporate representative to offer testimony regarding "ratepayer funds" and political or charitable contributions and lobbying expenses.
- 33. In addition to these demands, Commissioner Burns threatens in his cover letter that he "intend[s] to publicly file all documents related to this investigation."
 - 34. The subpoenas were served on August 26, 2016.
- 35. On information and belief, no other entities have been subpoenaed for the type of information Commissioner Burns seeks to compel from the Companies, including other entities that may have made political expenditures in connection with the Corporation Commission elections.

V. Any Political or Charitable Expenses Are Irrelevant to the Commission's Approved Rates.

- 36. Although Commissioner Burns has asserted that his purpose is to ensure that ratepayer funds are not used for political expenditures or charitable contributions, this is a pretext. Political expenditures or charitable contributions have no connection with ratepayer funds. It is APS and the Commission's long-standing policy that both are excluded from ratemaking.
- 37. Ratepayer funds are the revenue customers pay pursuant to the rates set by the Corporation Commission. A principal role of the Corporation Commission is to set "just and reasonable rates" to be charged by public service corporations such as APS. See Ariz. Const. Art. XV, § 3.

- 38. In general, the rates the Commission sets "should be sufficient to meet a utility's operating costs and to give the utility and its stockholders a reasonable rate of return on the utility's investment." *Residential Utility Consumer Office v. Ariz. Corp. Comm'n*, 199 Ariz. 588, 591 (App. 2001).
- 39. Utility rates are set in rate case proceedings. In those proceedings, the Commission reviews the utility's books and records for a "test year"—a specified twelvementh period—and uses data from that test year to determine the amount of revenue the utility requires to cover its costs. See Ariz. Admin. Code 14-2-103.
- 40. In the rate case proceeding, the Commission examines all of the operating expenses incurred in the test year and claimed by the utility, as well as the value of the utility's invested capital in the test year. Commission Staff performs an audit of the operating expenses claimed by the utility to ensure that those expenses are eligible to be recovered through customer rates. In addition, an independent accounting firm also reviews APS's books to ensure that all expenses are properly classified.
- 41. APS's current rates were set following a full rate case based on a 2010 test year. Thus, with the exception of certain adjustor mechanisms that account for specified expenses outside the test year (which are not relevant here), the current rates reflect solely the operating expenses incurred in 2010 that APS claimed in its rate case should be recovered from ratepayers. If APS incurred other expenses in 2010, but did not seek their recovery in its rate case, those other expenses would not be reflected in rates. [See also Letter to Mark Brnovich, Arizona Attorney General, from Chairman Doug Little, Docket No. AU-00000A-15-0309 (Feb. 22, 2016). Exhibit 10.]
- 42. APS does not, has not, and will not seek to include any political contributions in the costs it seeks to recover from ratepayers.
- 43. The Commission's own decisions prohibit a public service corporation from including charitable contributions in rates. See In re Application of Sulphur Springs Valley Elec. Coop., Inc., 2009 WL 2983260 (A.C.C. Sept. 8, 2009).

- 44. Pinnacle West is not a regulated entity and does not recover its operating expenses in rates.
- 45. Pinnacle West does provide business services to APS. To the extent APS seeks to recover in rates the cost of paying Pinnacle West for those business services, the relevant expenses would be submitted as part of the test-year ratemaking described above and subjected to Commission review and audit before they could be included in rates.
- 46. APS's currently pending rate case is based on a 2015 test year, meaning that only operating expenses from 2015 will have any relevance to rates paid by customers (again, with the exception of certain rate adjustors for specified expenses not relevant here). Those rates will be established by a future Commission decision on APS's current rate case. Before such a decision is issued, Commission Staff will have the opportunity to examine and audit any operating expenses claimed by APS to ensure that they are recoverable in customer rates. In fact, Commissioner Burns, already possesses information from 2010 and 2015 related to expenses recoverable from rates.
- 47. Thus, any expenses—for any purpose—APS incurred in 2011, 2012, 2013, or 2014 are irrelevant to the rates customers pay, because those rates are based solely on the 2010 test year. Likewise, expenses incurred by Pinnacle West are not relevant.

COUNT ONE

(Declaratory Judgment - First Amendment)

- 48. The Companies incorporate the preceding paragraphs of this Complaint as if fully set forth here.
- 49. The First Amendment and Article II, Section 6 of the Arizona Constitution protect the exercise of free speech against government infringement. The First Amendment "has its fullest and most urgent application to speech uttered during a campaign for political office." Citizens United v. Fed. Elections Comm'n, 558 U.S. 310, 339 (2010) (quoting Eu v. San Francisco Cnty. Democratic Central Comm., 489 U.S. 214, 223 (1989)) (internal quotation marks omitted).

- 50. In addition, the "decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342 (1995).
- 51. "The First Amendment protects political association as well as political expression," *Buckley*, 424 U.S. at 15 (citing *NAACP v. Alabama*, 357 U.S. 449 (1958)), and the right to political association includes association through financial contribution to political activities or charitable organizations. *Id.* at 65.
- 52. In light of these principles, the requirement to disclose political expenditures is subjected to, at a minimum, "exacting scrutiny," which requires that a disclosure requirement be justified by a "sufficiently important government interest" that has a "substantial relation" to the disclosure requirement. *Citizens United*, 558 U.S. at 366-67.
- 53. The justifications advanced for Commissioner Burns's subpoenas are not important governmental interests, and the subpoenas' selective targeting of only two entities for disclosure does not have a substantial relation to any legitimate government objective.
- 54. Aside from restricting disclosure regulations to those that meet exacting scrutiny, the First Amendment also prohibits viewpoint discrimination—speech restrictions based on the identity or viewpoint of a speaker. *Citizens United*, 558 U.S. at 340.
- 55. Commissioner Burns's subpoenas are targeted at APS and Pinnacle West and no other parties. Other speakers with different viewpoints who have spent significant amounts on political expenditures would not be subject to the same constraints as APS and Pinnacle West.
- 56. Pursuant to A.R.S. § 12-1831, the Companies are entitled to and request a judicial determination and declaratory judgment that Commissioner Burns's subpoenas are unlawful and unenforceable because they constitute unconstitutional viewpoint-based discrimination in violation of the First Amendment and Article II, Section 6 of the Arizona Constitution, and because they fail to satisfy the kind of exacting scrutiny required to justify compelled disclosure of political expenditures.

COUNT TWO

(Declaratory Judgment - Improper and Retaliatory Purpose Under Arizona Law)

- 57. The Companies incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
- 58. An administrative subpoena may not be issued for an improper, retaliatory purpose.
- 59. Furthermore, a subpoena for deposition may not be used to impose undue burden, annoyance, embarrassment, or oppression. Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P. 26(c)(1). Efforts to depose high-ranking company officials are particularly prone to abuse.
- 60. Commissioner Burns's subpoenas seek information that has no relevance to the Commission's regulatory function. The regulation of campaign finance expenditures is not within the scope of authority of the Corporation Commission. The Arizona Constitution, the Arizona Legislature and the citizens of Arizona through the initiative process have expressly delegated the regulation of campaign finance, including disclosure of political expenditures, to other branches of government.
- 61. Commissioner Burns also lacks authority to subpoena documents in the absence of any allegation of wrongdoing and disconnected from any Commission-authorized investigation.
- 62. On information and belief, the true purpose of Commissioner Burns's subpoenas is to exact political retribution for APS's refusal to abide by Commissioner Burns's request that it refrain from political speech and to deter political speech by APS and Pinnacle West. This is confirmed by his threat to publicly disseminate the information he gathers from the subpoenas, despite directly contrary statutory protections of confidential information pursuant to A.R.S. § 40-204(C).
 - 63. The subpoenas were issued for improper and retaliatory purposes.
- 64. The subpoenas' demand to depose the Companies' CEO is itself unduly oppressive harassment and only amplifies the improper and retaliatory purpose of the subpoenas as a whole.

- 65. Commissioner Burns's pledge to publicly disseminate the information gathered in the subpoenas is unduly oppressive harassment and amplifies the improper and retaliatory purpose of the subpoenas as a whole.
- 66. Pursuant to A.R.S. § 12-1831, the Companies are entitled to and request a judicial determination and declaratory judgment that (1) Commissioner Burns's subpoenas are unlawful and unenforceable because they were issued for an improper and retaliatory purpose in violation of Arizona law, (2) the subpoenas' demand for a deposition of the Companies' CEO is unlawful and unenforceable because it is an unreasonably burdensome effort to harass the Companies, and (3) the threatened dissemination of confidential information gathered through the subpoena power is unlawful.

COUNT THREE

(Special Action - Prohibition)

- 67. The Companies incorporate the preceding paragraphs of this Complaint as if fully set forth here.
- 68. Despite the unlawful purposes and requests made in his subpoenas, Commissioner Burns has stated that he intends to enforce his unlawful subpoenas against the Companies, including punishing the Companies for contempt if there is non-compliance.
- 69. Commissioner Burns is therefore proceeding or threatening to proceed without or in excess of legal authority.
- 70. The Companies have no plain, adequate and speedy remedy at law to prohibit Commissioner Burns from enforcing his subpoena.
- 71. Therefore, the Companies request that this Court provide special action relief in the nature of a writ of prohibition to prohibit the Commissioner from enforcing the subpoenas served on August 26, 2016.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment:

1	Α.	For a declaratory judgment that Commissioner Burns's subpoenas served on the
2	Companies or	August 26, 2016, are contrary to law.
3	В.	For special action relief in the nature of a writ of prohibition prohibiting the
4	Commissione	r from enforcing the subpoenas served on the Companies on August 26, 2016.
5	C.	For attorneys' fees pursuant to A.R.S. § 12-348 and any other applicable statute
6	or common la	w theory for attorneys' fees.
7	D.	For taxable costs and nontaxable costs as may be allowed by law.
8	E.	For such other relief as the Court deems just and equitable.
9	DATE	D this 9th day of September, 2016.
10		OSBORN MALEDON, P.A.
11		M_{\bullet} M'_{\bullet}
12 13		Mary R. O'Grady Joseph N. Roth
14		2929 North Central Avenue, 21st Floor Phoenix, Arizona 85012-2793
15 16		JENNER & BLOCK Matthew E. Price (<i>Pro Hac Vice</i> pending)
17		1099 New York Avenue, NW Suite 900
18		Washington, DC 20001-4412
19	B	Attorneys for Plaintiffs
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VERIFICATION

Barbara Lockwood, being first duly sworn, states:

- 1. I am authorized to verify the foregoing Verified Complaint on behalf of Plaintiffs Arizona Public Service Company and Pinnacle West Capital Corporation. No single person associated with Plaintiffs has personal knowledge of all the facts set forth in the Verified Complaint. Rather, the facts in the Verified Complaint have been compiled from relevant sources held by Plaintiffs. With these qualifications, I am authorized to state that the facts set forth in the foregoing Verified Complaint are true and correct, except matters stated on information and belief, which matters Plaintiffs believe to be true.
- 2. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9 day of September, 2016.

Barbara Lockwood Vice President, Regulation



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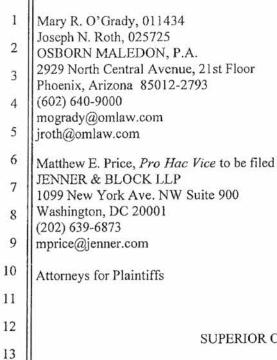
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MICHAEL K. JEANES, CLERK J. BAKER DEPUTY CLERK

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Arizona Public Service Company, an Arizona corporation, and Pinnacle West Capital Corporation, an Arizona corporation,

Plaintiffs,

vs.

Commissioner Robert Burns, a member of the Arizona Corporation Commission, in his official capacity,

Defendant.

No.CV 2016-014895

APPLICATION FOR AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PRELIMINARY INJUNCTION

And

APPLICATION FOR ORDER TO SHOW CAUSE

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Pursuant to Ariz. R. Civ. P. 65, Plaintiffs Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation ("Pinnacle West"), APS's parent company, collectively, the "Companies," respectfully move for a preliminary injunction restraining Arizona Corporation Commissioner Burns from compelling the production of documents, responses to information requests, and testimony pursuant to subpoenas he served on the Companies on August 26, 2016. This application is supported by the Companies' Verified Complaint.

INTRODUCTION

Last summer, media reports speculated that the Companies donated money in 2014 to certain politically active 501(c)(4) social welfare organizations. Arizona law permits such contributions and does not require their public disclosure. Nevertheless, Commissioner Burnswho is up for reelection this fall—asked the Companies "voluntarily" to refrain from any political expenditures in the 2016 election cycle. When the Companies refused to muzzle themselves, Commissioner Burns asked APS to produce any records of its political expenditures in 2014. When APS demurred, Commissioner Burns launched an investigation that culminated in the challenged subpoenas, which compel APS and Pinnacle West to provide written information concerning, among other things, their charitable contributions, political expenditures, and lobbying expenditures made between 2011 and 2016. The subpoenas also compel testimony by CEO Don Brandt on October 6, 2016. To the Companies' knowledge, never before has a single Commissioner issued a subpoena targeted at a company's political expression, disconnected from any Commission-authorized investigation, without any allegation of illegality.

This Court should issue a preliminary injunction suspending any obligation to comply with the subpoena. See Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n, 133 Ariz. 500 (1982). First, the subpoenas are massively overbroad relative to any purportedly legitimate purpose. To give his investigation a sheen of legitimacy, Commissioner Burns has repeatedly insisted that its purpose is to ensure that ratepayers are not being charged for APS's charitable contributions, political expenditures, and lobbying expenses. But, as explained below and as Commissioner Burns should well understand, the bulk of information sought by the subpoenas is patently irrelevant to that stated purpose. Thus, the Court should enjoin their enforcement as seeking

irrelevant information, unduly burdensome, and calculated to harass.

Second, the subpoenas violate the First Amendment. The context makes clear that, in reality, the subpoenas are intended as payback for the Companies' refusal to "voluntarily" refrain from speech during the current election season and are calculated to deter the Companies' political expression. Commissioner Burns has admitted as much: he publicly described the purpose of his inquiry as to prevent "utility overspending and overparticipating ... in the elections of Corporation Commissioners." Complaint ¶ 24 & Ex. 9. The First Amendment does not allow government officials to issue subpoenas to retaliate against or discourage political speech.

Third, Commissioner Burns lacks authority under Arizona law to issue the subpoena. To the extent that the subpoenas are motivated by the Commissioner's own personal "view [that] it [is] unacceptable and inappropriate for public service corporations or others to make campaign contributions," Complaint ¶ 10 & Ex. 2, that view has not been shared by the Legislature, which is tasked by the Constitution with regulating campaign finance, or by the citizens of Arizona who exercise lawmaking power through the initiative process. Commissioner Burns may not use subpoenas to override this legislative judgment.

Fourth, underscoring the subpoena's improper motivation, Commissioner Burns has demanded to depose the Companies' CEO Don Brandt, even though Mr. Brandt is not the most knowledgeable witness about the expenses APS seeks to recover through rates. The Court should not allow Commissioner Burns to use subpoenas to engineer a pre-election spectacle.

Fifth, further confirming the improper motive, Commissioners Burns has indicated his intention to make public all records he receives, without regard to whether they are business confidential. That flatly violates Arizona law, and plainly is calculated to harass.

The Court should declare that the Commissioner's subpoenas go beyond his lawful authority and enter an order enjoining enforcement of the subpoenas.

FACTUAL BACKGROUND

Last summer, following speculation in the media that APS had contributed money to 501(c)(4) organizations that were active in the 2014 elections for Corporation Commission, and in advance of his own reelection bid this year, Commissioner Burns launched his effort to deter

any participation by the Companies in the political process. On September 8, 2015, Commissioners Burns and Bitter Smith publicly issued a joint letter noting "APS's alleged contributions to political campaigns" and "request[ing] that all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." Complaint ¶¶ 7-8 & Ex. 2. Although the Commissioners acknowledged that "laws governing campaign finance are not within the Commission's purview" and that there were no allegations of any illegality, they nevertheless stated that they personally "view it as unacceptable and inappropriate for public service corporations or others to make campaign contributions in support of or in opposition to any candidate for the Corporations Commission." *Id.* ¶¶ 9-10 & Ex. 2.

On October 23, 2015, the Companies responded and respectfully declined "to forfeit any of their First Amendment rights to speak on public issues." Complaint ¶11 & Ex. 3. Undaunted, Commissioner Burns pressed ahead. On November 30, 2015, he sent another public letter to APS stating that "in my opinion, your support for any particular candidate should be open and transparent." Complaint ¶12 & Ex. 4. Based on that personal opinion, Commissioner Burns "ask[ed] APS to provide my office with a full report of all spending related in any way to the 2014 election cycle." *Id.* The ostensible purpose was "to find out if APS has spent ratepayer money to support or oppose the election of Arizona Corporation Commission candidates" and "to ensure that only APS's profits are being used for political speech." *Id.*

APS responded on December 29, 2015, confirming that "any political contribution ... is not treated as an operating expense recoverable in rates." Complaint ¶ 14 & Ex. 5.

In a January 28, 2016 letter, Commissioner Burns "embark[ed] upon the next stage of [his] inquiry into APS's possible campaign contributions" in the 2014 election cycle. Complaint ¶ 15 & Ex. 6. The letter explained that this "next stage" was necessary because APS had "rejected [the] proposal" to "voluntarily agree to refrain from making political contributions ... in the upcoming election cycle," and then had declined to "provide a report listing any campaign contributions ... by APS in 2014." Complaint ¶ 16 & Ex. 6. Commissioner Burns announced his intent "to broaden my inquiry to include funds expended on all political contributions,

 lobbying, and charitable contributions, *i.e.* all donations made—either directly or indirectly—by APS or under APS's brand name for any purpose." APS did not respond.

However, during a Commission meeting on April 12, 2016, Commissioner Burns declared that "[a]ll votes of this Commission are a tool to be used," and that he "will not support any further action items requested by APS with the exception of an item that might have health or safety components" until APS complied with his demands. Complaint ¶ 19 & Ex. 7.

In August 2016, Commissioner Burns announced his intent to use Commission resources to retain an attorney to investigate campaign expenditures in Commissioner elections to prevent "utility overspending and overparticipating, if you will, in the elections of Corporation Commissioners." Complaint ¶¶ 23-24 & Ex. 9. On August 11, the Commission declined to authorize any expenditure for such an investigation. Complaint ¶ 25 & Ex. 9.

On August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of this Complaint. Complaint ¶ 26 & Ex. 1. A cover letter justified the subpoenas on the ground that "APS has refused to voluntarily answer my questions about any political expenditures that APS/Pinnacle West may have made," and that subpoenas were needed to "determine whether APS has used ratepayer funds for political, charitable or other expenditures." Complaint ¶¶ 27-28 & Ex 1. Commissioner Burns stated that he "intend[s] to publicly file all documents related to this investigation." Complaint ¶ 33 & Ex. 1.

The subpoenas ordered APS and Pinnacle West to provide, by September 15, 2016, documents and information including: (1) all documents "of any kind that describe arrangements governing Pinnacle West's expenditures or donations of funds for any purpose under APS's name or brand"; (2) all documents "of any kind that describe the arrangements governing the APS Foundation's expenditures or donations of funds for any purpose under APS's name or brand"; (3) for APS, in each year 2011-2016: "each charitable contribution," "each political contribution," "each expenditure made ... for lobbying purposes," "each marketing/advertising expenditure," and "a list of all expenditures to 501(c)(3) and 501(c)(4) organizations"; (4) for Pinnacle West, in each year 2011-2016: "all charitable contributions," "all donations for political purposes," "all expenditures to 501(c)(3) organizations," "all expenditures to 501(c)(4)

organizations," and "each marketing/advertising expenditure"; and (5) information on "any foundations or other entities (formed for charitable or other philanthropic purposes) that are related to APS and/or Pinnacle West," including "how these entities are funded." Complaint ¶ 29 & Ex. 1. In addition, the subpoenas demand that the Companies' CEO Donald Brandt appear for testimony on October 6, 2016. Complaint ¶ 30 & Ex. 1. The subpoenas were served on August 26, 2016. Complaint ¶ 34.

STANDARD OF REVIEW

"When an Arizona administrative agency unreasonably infringes on the liberties of a corporation, ... the Arizona courts ... must be able to curb the abuse of power ... Thus, if an administrative agency's investigation becomes a tool of harassment and intimidation rather than a means to gather appropriate information, the appropriate court may intrude and stop the incursion into the constitutional liberties of the parties under investigation." *Polaris*, 133 Ariz. At 506-07. "[A] party may resist [the] Commission's subpoena on grounds that the inquiry is not within its scope of authority, the order is too vague, the subpoena seeks irrelevant information, or the investigation is being used for an improper purpose, such as to harass." *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000).

"A party seeking a preliminary injunction must show a strong likelihood of success on the merits, a possibility of irreparable injury if the injunction is not granted, a balance of hardships weighing in his favor, and public policy favoring the requested relief." TP Racing, L.L.L.P. v. Simms, 232 Ariz. 489, 495 ¶21 (App. 2013). "A court applying this standard may apply a 'sliding scale." Ariz. Ass'n of Providers for Persons with Disabilities v. State, 223 Ariz. 6, 12 ¶12 (App. 2009). "In other words, the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party." Id. (quotations and alterations omitted).

¹ Here, the subpoenas have *not* been issued by the Commission, but instead by Commissioner Burns acting alone. Because Commissioner Burns' actions are unprecedented, the proper procedural path for challenging the subpoenas is unclear. Out of an abundance of caution, the Companies have filed a motion to quash before the Commission contemporaneously with the filing of this lawsuit and motion for preliminary injunction. The Companies have also lodged objections with Commissioner Burns.

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ARGUMENT

. THE COMPANIES ARE LIKELY TO PREVAIL ON THE MERITS.

A. The Bulk of the Information Sought Is Irrelevant to Ratepayer Protection.

Commissioner Burns has claimed the subpoenas are justified to assure that ratepayers are not being charged for charitable, political, or lobbying expenditures. *See* Complaint ¶¶ 12, 26, 33 & Exs. 3, 8. However, the bulk of the information sought by the subpoenas is irrelevant to that purpose. *See Carrington*, 199 Ariz. At 305 ¶ 9 (Commission subpoena may not "seek[] irrelevant information").

Utility rates are set in rate case proceedings in which the Commission reviews the utility's books and records for a "test year"—a specified twelve-month period—and uses data from that test year to determine the amount of revenue the utility requires to cover its costs. See Ariz. Admin. Code 14-2-103; Tucson Elec. Power Co. v. Ariz. Corp. Comm'n, 132 Ariz. 240, 246 (App. 1982) (describing use of test year); Complaint ¶¶ 36-47 (describing ratemaking process); see generally, e.g., In re Arizona Pub. Serv. Co., 258 P.U.R.4th 353 (A.C.C. June 28, 2007). Specifically, the Commission examines all operating expenses claimed by the utility and the value of the utility's invested capital (or "rate base") during the test year. Complaint ¶¶ 38-39. Commission Staff performs an audit to ensure that the operating expenses claimed by the utility are in fact recoverable in rates. Id. ¶ 40. An independent accounting firm also reviews APS's books to ensure that all expenses are properly classified. Id. Based on the operating expenses incurred in the test year and deemed to be recoverable, and based on the utility's invested capital in the test year multiplied by a fair rate of return, the Commission determines the utility's revenue requirement. Id. ¶¶ 37-40. It then uses that revenue requirement to set the rates that the utility will collect going forward. Id. ¶ 41. Once set, rates are not adjusted to reflect changes in operating expenses or rate base, until the utility undertakes a new ratemaking based on a more recent test year. Id. ¶ 41; Complaint Ex. 10.2

² The one exception are expenses that may be recovered through adjustor mechanisms. These expenses are specified in Commission Orders, are transparently calculated and updated in Commission dockets, and do not include the types of expenses at issue in the subpoena.

APS's current rates were set based on a 2010 test year. Complaint ¶ 41. In other words, the current rates reflect solely the operating expenses that APS incurred in 2010 and for which it claimed recovery, and that the Commission found to be recoverable after the Staff's audit. *Id.* ¶§ 40-41.³ If APS incurred other expenses in 2010, but did not seek their recovery, those other expenses would not be reflected in rates. *Id.* ¶ 41. Currently, APS is seeking new rates, based on a 2015 test year. Thus, these new rates will reflect only 2015 operating expenses claimed by APS and found to be recoverable after an audit. Any expenses APS incurred in 2011, 2012, 2013, 2014, and 2016 are categorically irrelevant to the rates customers currently pay or will pay under the new rates, because those rates—as just explained—are based solely on expenses incurred in the test year (2010 for current rates, and 2015 for proposed new rates). Pinnacle West, meanwhile, is not a regulated entity and does not recover its operating expenses in rates.⁴

Accordingly, the bulk of the information demanded by Commissioner Burns is irrelevant to the advertised purpose of the subpoena. APS should not be compelled to produce documents, information, or testimony relating to its expenses in any year other than a test year. And Pinnacle West should not be compelled to produce any documents or testimony at all.

B. The Subpoenas Violate the First Amendment.

The First Amendment "has its fullest and most urgent application to speech uttered during a campaign for political office." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010). "Corporations..., like individuals, contribute to the discussion, debate, and the dissemination of information and ideas that the First Amendment seeks to foster." *Id.* at 343 (internal quotation marks omitted). "The First Amendment protects political association as well as political expression," *Buckley v. Valeo*, 424 U.S. 1, 15 (1976) (citing *NAACP v. Alabama*, 357)

³ APS has made clear that it did not and will not seek to include any political contributions in the expenses it seeks to recover in rates. See Complaint ¶ 42 & Ex. 5. Likewise, charitable contributions may not be recovered in rates. See In re Application of Sulphur Springs Valley Elec. Coop., Inc., 2009 WL 2983260 (A.C.C. Sept. 8, 2009). APS likewise does not seek to recover lobbying expenses in rates. The Commission has held that if APS does seek to recover any of its lobbying costs in rates as useful to customers, "APS must provide the itemized lobbying costs associated with each benefit it alleges resulted from the specific lobbying activity." In re Arizona Pub. Serv. Co., 258 P.U.R.4th 353 (A.C.C. June 28, 2007).

⁴ Pinnacle West does provide business services to APS. To the extent APS seeks to recover in rates the cost of paying Pinnacle West for those business services, the relevant expenses would be submitted as part of the test-year ratemaking described above and subjected to Commission review and audit before they could be included in rates.

 U.S. 449 (1958)), which encompasses financial contribution to political activities or charitable organizations. *Id.* at 65. Strong First Amendment interests also exist in anonymous speech. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342-43 (1995). Consequently, compelled disclosure of political or charitable contributions can violate First Amendment rights. *Buckley*, 424 U.S. at 64; *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008).

1. The Subpoenas Discriminate Against the Companies Based on Their Viewpoint and Are Calculated to Discourage Political Speech.

Commissioner Burns' subpoenas violate the First Amendment for the independent reason that they discriminate based on viewpoint and are calculated to deter political speech. Indeed, they are a textbook example of the kind of abuse the First Amendment protects against. The subpoenas are aimed selectively at two companies after they refused to "voluntarily" abstain from political speech—companies against which Commissioner Burns is campaigning in seeking reelection. Complaint Ex. 8 (Commissioner Burns' website describing "my battle with APS" as his top issue). Government action burdening speech violates the First Amendment when it is "adopted or is enforced in order to harass," *Citizens United*, 558 U.S. at 370, such as when it discriminates based on the speaker's viewpoint or is calculated to deter expression.

That is the case here. *First*, the subpoenas compel disclosure selectively based on the viewpoint and identity of the speaker. From the very start of his inquiry, Commissioner Burns has focused on "APS's alleged contributions to political campaigns," Complaint ¶ 8 & Ex. 1, and has railed against "*utility* overspending and overparticipating" in Commission elections. Complaint ¶ 22 & Ex.7 (emphasis added). Other speakers with viewpoints more aligned with Commissioner Burns, such as the rooftop solar industry that reportedly has spent heavily on Corporation Commission elections, are not and would not be subject to any disclosure requirement. In fact, the Companies would be the only corporations in Arizona subject to this disclosure mandate. Such selective regulation flatly violates the First Amendment. "[T]he First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not

⁵ See, e.g., Howard Fischer, Solar Interests Pour Money Into Corp Comm Race, Capitol Media Services, Aug. 29, 2016

others." Citizens United, 558 U.S. at 340 (internal citations, quotation marks omitted); see also Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 828-29 (1995) ("Discrimination against speech because of its message is presumed to be unconstitutional.... The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.").

Second, the subpoenas are intended to accomplish through different means what Commissioner Burns failed to achieve when the Companies refused to refrain "voluntarily" from future political expenditures. Commissioner Burns stated that he was "broaden[ing]" his inquiry and "requir[ing]" cooperation because APS had refused to accede to his demands. Complaint ¶¶ 15-17 & Ex.5. That kind of retaliation is plainly unlawful. See Wilkie v. Robbins, 551 U.S. 537, 555 (2007) (noting the "longstanding recognition that the Government may not retaliate for exercising First Amendment speech rights"); see also White v. Lee, 227 F.3d 1214, 1228 (9th Cir. 2000) ("[G]overnment officials violate [the First Amendment] when their acts would chill or silence a person of ordinary firmness").

2. The Subpoenas Are Not Justified By Any Important Government Interest.

Nor can the subpoenas be justified under the case law concerning generally applicable disclosure requirements. In the first place, as just described, these subpoenas impose generally applicable obligations. They are selectively targeted at two companies. But in any event, they also fail the "exacting scrutiny" courts apply to generally applicable disclosure requirements. Citizens United, 558 U.S. at 366-67. First, the requirement must serve a "sufficiently important government interest," id., that "reflect[s] the seriousness of the actual burden on First Amendment rights." Davis, 554 U.S. at 744 (emphasis added); John Doe #1 v. Reed, 561 U.S. 186, 196 (2010). Second, that interest must have a "substantial relation" to the disclosure requirement. Citizens United, 558 U.S. at 366-67. The subpoenas cannot survive such scrutiny.

The subpoenas are not justified by any important governmental interest. As an initial matter, the subpoenas cannot be justified by the Commission's interests in protecting ratepayers because, as discussed above, they are massively overbroad with respect to that interest. See Ariz. Right to Life Political Action Comm. v. Bayless, 320 F.3d 1002, 1010-11 (9th Cir. 2003)

(invalidating statute burdening political speech where fit between statute and purported purpose "is poor at best"); Am. Civil Liberties Union of Nevada v. Heller, 378 F.3d 979, 1000 (9th Cir. 2004) (invalidating law requiring certain groups to reveal names of financial sponsors as overbroad). Requiring the Companies to produce information irrelevant to customer rates bears no "substantial relation" to the Commission's interest in regulating rates. Citizens United, 558 U.S. at 366-67.

Nor can the subpoenas be justified in order to prevent the "overparticipati[on]" of utilities in the electoral process, as Commissioner Burns' has described his goal. See Complaint ¶ 22 & Ex. 7. "[I]t is our law and our tradition that more speech, not less, is the governing rule." Citizens United, 558 U.S. at 361. The Constitution "entrust[s] the people to judge what is true and what is false." Id. at 354-55. Commissioner Burns may disagree, but that is the law.

At times, Commissioner Burns has also suggested that compelled disclosure will prevent the appearance of corruption. To be clear, Commissioner Burns does not allege any actual quid pro quo corruption. Instead, he claims to prevent an appearance of undue influence that might arise in the future. See Complaint Ex. 9 at 20 ("I'm not telling anybody that you're unduly influenced. I'm concerned about the future of who comes to run for the Corporation Commission and how they are perceiving these large sums of money being pumped into these campaigns.").

However, the U.S. Supreme Court held that independent spending poses no risk of "quid pro quo corruption." Citizens United, 558 U.S. at 359. The Court made crystal clear that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Id. at 357 (emphasis added). In fact, "there is only scant evidence that independent expenditures even ingratiate.... Ingratiation and access, in any event, are not corruption." Id. at 360. The Court explained that "[t]he absence of prearrangement and coordination ... with the candidate or his agent ... alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate." Id. at 357. The Court further explained that such expenditures are nothing more than "political speech presented to the electorate" in attempt to "persuade voters." Id. at 360. The Supreme Court's holding applies with even greater force to anonymous contributions received by independent 501(c)(4) social

welfare organizations, which then decide how to use the funds they receive in support of those organizations' own advocacy goals and agendas. Such contributions are two steps removed from any candidate and, under the Supreme Court's reasoning, pose no risk of corruption.

C. Commissioner Burns Lacks the Authority to Issue the Subpoenas.

Commissioner Burns lacks authority to issue the subpoenas. First, a subpoena aimed at the disclosure of political expenditures is not "within [the Commission's] scope of authority." Carrington, 199 Ariz. At 305 ¶9; see also People ex rel. Babbitt v. Herndon, 119 Ariz. 454, 456 (1978) ("[A] party may resist an administrative subpoena on any appropriate grounds[,]... includ[ing] that the inquiry is not within the agency's scope of authority."). The Commission has no legitimate regulatory interest in a public service corporation's charitable and political contributions and lobbying expenses, so long as it is not seeking to treat those expenditures as recoverable operating expenses. And the Commission has no legitimate interest at all in such expenses by an unregulated corporation, such as Pinnacle West. Indeed, Commissioner Burns himself acknowledged that the "laws governing campaign finance are not within the Commission's purview." Complaint ¶9 & Ex. 2.

The Arizona Constitution delegated campaign finance regulations to the legislature, not to the Corporation Commission. See Ariz. Const. art. 7, § 16.6 Regulation of campaign finance is governed by the "comprehensive statutory scheme" set forth in A.R.S. §§ 16–901 to 16–961, Pacion v. Thomas, 225 Ariz. 168, 169 ¶ 6 (2010), and is administered by the Secretary of State and the Citizens Clean Elections Commission. Violations are punished by the Citizens Clean Elections Commission, Attorney General or county, city, or town attorney. A.R.S. §§ 16-924; 956(A)(7). The Commission has no authority to enforce the campaign finance statutes.

Under Arizona law, corporations need not disclose contributions to groups that may make independent political expenditures. And groups that make independent expenditures are only required to disclose their donors if the groups qualify as "political committees" under Arizona law. A.R.S. §§ 16-913, 16-914.02(K), 16-915. Commissioner Burns, like any citizen, is free to advocate for a change in the law; but he may not use the subpoena power to override policy

⁶ The People also have lawmaking power through citizens' initiatives and referenda. Ariz. Const. IV, pt. 1, § 1.

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decisions that the Constitution assigns to the legislative branch. To hold otherwise would violate the Constitution's separation of powers. State ex rel. Montgomery v. Mathis, 231 Ariz. 103, 121 ¶ 66 (App. 2012) ("A violation of the separation of powers doctrine occurs when one branch of government usurps another branch's powers or prevents that other branch from exercising its authority."); Williams v. Pipe Trades Indus. Program of Ariz., 100 Ariz. 14, 17 (1966) (the "Corporation Commission's powers do not exceed those to be derived from a strict construction of the Constitution and implementing statutes."); Tonto Creek Estates Homeowners Ass'n v. Ariz. Corp. Comm'n, 177 Ariz. 49, 55-57 (App. 1993).

Second, Commissioner Burns lacks the authority to subpoena documents in the absence of any allegation of wrongdoing and disconnected from any Commission-authorized investigation. With respect to APS documents, Commissioner Burns claims authority under A.R.S. 40-241. (That provision applies solely to public service corporations and not to their parents or affiliates.) But A.R.S. 40-241 cannot be read in isolation. It describes the power to "inspect" records (not demand written responses) in the context of a proceeding that the Commission as a whole has authorized under A.R.S. 40-102(C), which states, "Any investigation, inquiry or hearing may be undertaken or held by or before any commissioner designated by the commission for the purpose." (emphasis added). Regarding Pinnacle West documents, Commissioner Burns has cited Article 15 Section 4 of the Arizona Constitution, but that provision likewise does not support him. In Arizona Corp. Comm'n v. State ex rel. Woods, 171 Ariz. 286 (1992), the Supreme Court considered at length whether the Commission had authority to imposing reporting requirements on the affiliates of public service corporations, and concluded that it did pursuant to its powers under Article 15 Section 3 of the Arizona Constitution, but only insofar as the requirements are "reasonably connected to and necessary for its ... ratemaking power." Id. at 294-95. These reporting rules are codified in Ariz. Admin. Code R14-2-801 to -806, and they do not require disclosure of the information sought by Commissioner Burns. It would have been nonsensical for the Supreme Court to engage in an extended analysis of the Commission's limited powers over affiliates under Article 15 Section 3, if the Commission could have simply bypassed those limitations by invoking Article 15 Section

4. The implications of Commissioner Burns' position are sweeping: any single Commissioner could decide to mandate the public disclosure of any information, by any corporation doing business in Arizona, for any reason—even when opposed by the remainder of the Commission. The Court should reject such a notion.

D. Compelling Testimony by the Companies' CEO Is Wholly Improper.

Commissioner Burns' subpoenas compound their overbroad requests for written information with a demand to depose the Companies' CEO. That demand is improper not only for the reasons already discussed, but also because the law protects witnesses from undue burden and "annoyance, embarrassment, [or] oppression." Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P. 26(c)(1); Am. Family Mut. Ins. Co. v. Grant, 222 Ariz. 507, 513 § 21 (App. 2009) (requiring less intrusive means of discovery to avoid harassment). Accordingly, courts have held that depositions of high-ranking company officials are unduly burdensome and unwarranted. See, e.g., Baine v. Gen. Motors Corp., 141 F.R.D. 332, 334 (M.D. Ala. 1991) (the "legal authority is fairly unequivocal" that sharp limits are placed on depositions of high-ranking officials). Efforts to depose high-level executives "create[] a tremendous potential for abuse or harassment." Apple Inc. v. Samsung Elecs. Co., Ltd., 282 F.R.D. 259, 263 (N.D. Cal. 2012). A party cannot compel testimony from a highly placed executive unless it can show that the executive has "knowledge that is both unique and relevant." Guan Ming Lin v. Benihana Nat'l Corp., No. 10 CIV. 1335, 2010 WL 4007282, at *2 (S.D.N.Y. Oct. 5, 2010) (prohibiting deposition of high-ranking executive who had "no special personal knowledge" when others could testify to same topics).

Here, Mr. Brandt does not have unique or special knowledge regarding the subpoena's purported purpose. Instead, Commissioner Burns seeks the public spectacle of calling the CEO to the carpet the week before early voting begins. If any deposition is allowed, it should be of a lower-level person with relevant knowledge of how APS accounted for its expenses during the 2010 and 2015 test years. See Salter v. Upjohn Co., 593 F.2d 649, 651 (5th Cir. 1979) (affirming order prohibiting executive deposition until lower-level employees deposed); Am. Family Mut. Ins Co., 222 Ariz. at 513 ¶ 21 (prohibiting potentially harassing discovery until "litigants . . . at least initially pursue less intrusive discovery").

E. Commissioner Burns's Threat to Publicly Disseminate the Information Gathered by the Subpoenas Underscores Its Improper Purpose.

Commissioner Burns has declared his intention to make publicly available all the information and testimony he gathers. That flagrantly violates statutory protections of confidential business information. See A.R.S. § 40-204(C) ("No information furnished to the commission by a pu. service corporation, except matters specifically required to be open to public inspection, shall be open to public inspection or made public"). To be made public, there must be due process: an "order of the commission entered after notice" or an order entered "in the course of a hearing or proceeding." Id. There is no basis for Commissioner Burns to unilaterally make confidential information public, and the threat merely underscores the subpoena's improper purpose.

II. AN INJUNCTION IS NEEDED TO PREVENT IRREPARABLE HARM.

Irreparable harm exists where "damages are inadequate to address the full harm suffered." IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship, 228 Ariz. 61, 65 ¶ 11 (App. 2011). The U.S. Supreme Court has long recognized that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Here, no amount of damages could remedy the forced public disclosure of material protected by the First Amendment.

First, once the information is revealed, it can never again be protected. A court cannot "unring the bell' once the information has been released." Maness v. Meyers, 419 U.S. 449, 460 (1975); Mobilisa, Inc. v. Doe, 217 Ariz. 103, 112 ¶ 26 (App. 2007) ("[A]n unmasked anonymous speaker cannot later obtain relief" if the other party fails to prevail on the merits). "Given this significant consequence, it is even more appropriate to require the court to balance the parties' competing interests before permitting discovery on the identity issue." Mobilisa, 217 Ariz. at 112 ¶ 26.

Second, forced disclosure creates a risk of retribution. The Supreme Court has recognized that such disclosure can "subject [the speaker] to threats, harassment, or reprisals from ... Government officials." Citizens United, 558 U.S. at 367. That risk is more than theoretical here:

Commissioner Burns already launched a "broadened" investigation into the Companies' past speech when APS refused to refrain from speech in the upcoming election, and he has described his vote as a "tool" that he will use to punish APS. Complaint ¶¶ 17, 19, Exs. 6,7.

Further heightening the irreparable harm of disclosure is Commissioner Burns' stated intent to publicly release any information received. "It would be difficult—if not impossible—to reverse the harm from those broadcasts" of the Companies' protected information. Hollingsworth v. Perry, 558 U.S. 183, 195 (2010). That is true not only of First Amendment-protected materials, but also of the Companies' confidential business information that Commissioner Burns threatens to release publicly.

III. THE BALANCE OF HARMS AND PUBLIC INTEREST FAVOR AN INJUNCTION.

The balance of harms strongly favors an injunction. In contrast to the Companies, Commissioner Burns will suffer no harm from an injunction: he already has access to the materials APS submitted or will submit in connection with rates set based on 2010 and 2015 test years. Moreover, Commissioner Burns initiated this investigation more than nine months ago. There is no urgent and sudden need for the subpoenas.

The public interest likewise favors an injunction. As described above, Arizona has not generally required disclosure of donors to 501(c)(4) public welfare organizations because of the public interest in protecting the First Amendment freedom of association As the State of Arizona recently told the U.S. Supreme Court, "the First Amendment harm is inherent in the disclosure [of donations] to the government official" because it encourages such "government officials ... to single out their political opponent for retribution." Br. of Arizona et al. as Amicus Curiae in Support of Petitioner at 2, Center for Competitive Politics v. Harris, No. 15-152 (U.S. Sept. 2, 2015). And the Commission as a whole has refused to endorse Commissioner Burns' "battle with APS." Complaint ¶¶ 20, 25, & Ex. 8. The public interest weighs on the side of protecting First Amendment rights.

CONCLUSION

An Order to Show Cause should be issued and a preliminary injunction granted.

DATED this 9th day of September, 2016. OSBORN MALEDON, P.A.

> By /s/ Mary R. O'Grady

Joseph N. Roth 2929 North Central Avenue, 21st Floor Phoenix, Arizona 85012-2793

JENNER & BLOCK LLP Matthew E. Price 1099 New York. Ave. NW Suite 900 Washington, DC 20001

Attorneys for Plaintiffs



UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2016

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from

Registrantic State of Incorporations IRS Employer 86-0512431 PINNACLE WEST CAPITAL CORPORATION (An Arizona corporation) 400 North Fifth Street, P.O. Box 53999 Phoenix, Arizona 85072-3999 (602) 250-1000 86-0011170 1-4473 ARIZONA PUBLIC SERVICE COMPANY (An Arizona corporation) 400 North Fifth Street, P.O. Box 53999 Phoenix, Arizona 85072-3999 (602) 250-1000

Securities registered pursuant to Section 12(b) of the Act:

Title Of Each Class Name Of Each Exchange On Which Registered New York Stock Exchange PINNACLE WEST CAPITAL CORPORATION Common Stock, No Par Value ARIZONA PUBLIC SERVICE COMPANY None None Securities registered pursuant to Section 12(g) of the Act:
ARIZONA PUBLIC SERVICE COMPANY Common Stock, Par Vulue \$2.30 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act

PINNACLE WEST CAPITAL CORPORATION Yes 🖾 No 🗆 ARIZONA PUBLIC SERVICE COMPANY Yes 🗵 Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

PINNACLE WEST CAPITAL CORPORATION Yes D No 🗵 ARIZONA PUBLIC SERVICE COMPANY Yes D No 🗵

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes 🗷 No 🖸 PINNACLE WEST CAPITAL CORPORATION ARIZONA PUBLIC SERVICE COMPANY Yes 🖾 No 🗆

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 mention (or for such shorter period that the registrant was required to submit and post such files)

Ver III No D PINNACLE WEST CAPITAL CORPORATION ARIZONA PUBLIC SERVICE COMPANY Yes 🖾 No 🗆

Indicate by check mark if disclosure of delimporal filers pressure to from 405 of Regulation 5-K is not contained become and will not be contained, to the best of registrant's knowledge, in definitive prexy or information statements incorporated by reference in Part III of this Form 10-K or in any amendment to this Form 10-K, 90

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "necelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

PINNACLE WEST CAPITAL CORPORATION

Large accelerated liler (8)

Smaller reporting company [1] Non-recelerated filer [] (Do not check if a smaller reporting company)

ARIZONA PUBLIC SERVICE COMPANY

Large accelerated filer Accelerated filer [1]

Smaller repetting company (2) Non-accelerated filer. 180 (Do not check if a smaller reporting company)

Indicate by check made whether each registrant is a shell company (as defined in Role 12b-2 of the Act). Yes 17 No. 80

State the aggregate market value of the voltog and non-voring common equity held by non-affiliator, computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of vach registrant's more recently completed second fixed quarter.

PINNAGGE WEST CAPITAL CORPRECTION ARIZONA PUBLIC SERVICE COMPANY

The number of charge personaling of each registrant's country stock as of February 17, 2017.

PINNACLE WEST CAPITAL CORPORATION ARIZONA PUBLIC SERVICE COMPANY

\$8,961,301,256 as of June 10, 2016 \$5 as all time 30, 2015.

111,040,169 shares

Common Stock, \$2.50 par value, 71,261,917 shares. Pariacle West Capital Corporation as the sole holder of Arizona Poblic Service Company's Common Stock.

DOCUMENTS INCORPORATED BY REFERENCE
Forthors of Provacle West Capital Corporation's deliculose Proxy Statement relating to its Azunal Meeting of Statements to be held on May 17, 2010 are incorporated by reference into Part III hereof

Arienna Public Service Company meets the conditions set forth in Central Instruction I(1)(a) and (b) of Form 10-K and is therefore filling this form with the reduced disclassical disclass

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This combined Form 10-K is separately filed by Pinnacle West and APS. Each registrant is filing on its own behalf all of the information contained in this Form 10-K that relates to such registrant and, where required, its subsidiaries. Except as stated in the preceding sentence, neither registrant is filing any information that does not relate to such registrant, and therefore makes no representation as to any such information. The information required with respect to each company is set forth within the applicable items. Item 8 of this report includes Consolidated Financial Statements of Pinnacle West and Consolidated Financial Statements of APS. Item 8 also includes Combined Notes to Consolidated Financial Statements.

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GLOSSARY OF NAMES AND TECHNICAL TERMS

4CA 4C Acquisition, LLC, a wholly-owned subsidiary of Pinnacle West

ac Alternating Current

ACC Arizona Corporation Commission

ADEQ Arizona Department of Environmental Quality
AFUDC Allowance for Funds Used During Construction

ANPP Arizona Nuclear Power Project, also known as Palo Verde

APS Arizona Public Service Company, a subsidiary of the Company

ARO Asset retirement obligations
ASU Accounting Standards Update
BART Best available retrofit technology

Base Fuel Rate The portion of APS's retail base rates attributable to fuel and purchased power costs

BCE Bright Canyon Energy Corporation, a subsidiary of the Company

BHP Billiton BHP Billiton New Mexico Coal, Inc.
BNCC BHP Navajo Coal Company

CAISO California Independent System Operator

CCR Coal combustion residuals
Cholla Cholla Power Plant
de Direct Current

distributed energy systems Small-scale renewable energy technologies that are located on customers' properties, such as rooftop solar systems

DOE United States Department of Energy
DOI United States Department of the Interior
DOJ United States Department of Justice
DSM Demand side management

DSMAC Demand side management adjustment charge

EES Energy Efficiency Standard

El Dorado El Dorado Investment Company, a subsidiary of the Company

El Paso Electric Company

EPA United States Environmental Protection Agency
FERC United States Federal Energy Regulatory Commission

Four Corners Power Plant

GWh Gigawatt-hour, one billion watts per hour

kV Kilovolt, one thousand voits

kWh Kilowatt-hour, one thousand watts per hour LFCR Lost Fixed Cost Recovery Mechanism MMBtu One million British Thermal Units MW Megawatt, one million watts MWh Megawatt-hour, one million watts per hour

Native Load Retail and wholesale sales supplied under traditional cost-based rate regulation

Navajo Plant Navajo Generating Station

NERC North American Electric Reliability Corporation
NRC United States Nuclear Regulatory Commission
NTEC Navajo Transitional Energy Company, LLC

OCI Other comprehensive income

OSM Office of Surface Mining Reclamation and Enforcement
Palo Verde Palo Verde Nuclear Generating Station or PVNGS

Pinnacle West Pinnacle West Capital Corporation (any use of the words "Company," "we," and "our" refer to Pinnacle West)

PSA Power supply adjustor approved by the ACC to provide for recovery or refund of variations in actual fuel and purchased power costs compared with the

Base Fuel Rate

RES Arizona Renewable Energy Standard and Tariff

Salt River Project or SRP Salt River Project Agricultural Improvement and Power District

SCE Southern California Edison Company
TCA Transmission cost adjustor

TCA Transmission cost adju-VIE Variable interest entity

FORWARD-LOOKING STATEMENTS

This document contains forward-looking statements based on current expectations. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume," "project" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. In addition to the Risk Factors described in Item 1A and in Item 7 — "Management's Discussion and Analysis of Financial Condition and Results of Operations," these factors include, but are not limited to:

- · our ability to manage capital expenditures and operations and maintenance costs while maintaining reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- · power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant
 operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- · our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- · our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- · risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- · current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- · the cost of debt and equity capital and the ability to access capital markets when required;
- · environmental, economic and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- · volatile fuel and purchased power costs;
- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the
 resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- · potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- · generation, transmission and distribution facility and system conditions and operating costs;
- · the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and ACC orders.

These and other factors are discussed in the Risk Factors described in Item 1A of this report, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

PART I

ITEM 1. BUSINESS

Pinnacle West

Pinnacle West is a holding company that conducts business through its subsidiaries. We derive essentially all of our revenues and earnings from our wholly-owned subsidiary, APS. APS is a vertically-integrated electric utility that provides either retail or 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.

Pinnacle West's other subsidiaries are El Dorado, BCE and 4CA. Additional information related to these subsidiaries is provided later in this report.

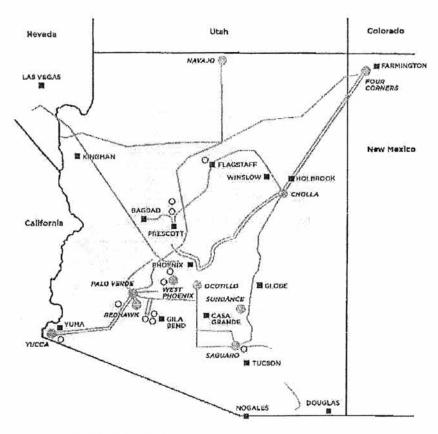
Our reportable business segment is our regulated electricity segment, which consists of traditional regulated retail and wholesale electricity businesses (primarily electric service to Native Load customers) and related activities, and includes electricity generation, transmission and distribution.

BUSINESS OF ARIZONA PUBLIC SERVICE COMPANY

APS currently provides electric service to approximately 1.2 million customers. We own or lease 6,236 MW of regulated generation capacity and we hold a mix of both long-term and short-term purchased power agreements for additional capacity, including a variety of agreements for the purchase of renewable energy. During 2016, no single purchaser or user of energy accounted for more than 1.1% of our electric revenues.

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The following map shows APS's retail service territory, including the locations of its generating facilities and principal transmission lines.

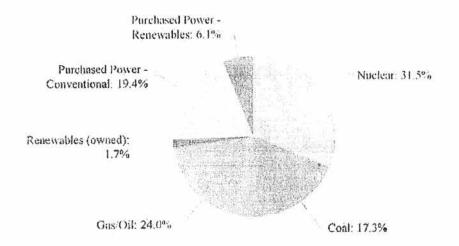


APS Retail Electric Service Territory

- Major APS Power Plants
- Principal APS Transmission Lines
- APS Solar Power Plants

Energy Sources and Resource Planning

To serve its customers, APS obtains power through its various generation stations and through purchased power agreements. Resource planning is an important function necessary to meet Arizona's future energy needs. APS's sources of energy by type used to supply energy to Native Load customers during 2016 were as follows:



Generation Facilities

APS has ownership interests in or leases the coal, nuclear, gas, oil and solar generating facilities described below. For additional information regarding these facilities, see Item 2.

Coal-Fueled Generating Facilities

Four Corners — Four Corners is located in the northwestern corner of New Mexico, and was originally a 5-unit coal-fired power plant. APS owns 100% of Units 1, 2 and 3, which were retired as of December 30, 2013. APS operates the plant and owns 63% of Four Corners Units 4 and 5 following the acquisition of SCE's interest in Units 4 and 5 described below. APS has a total entitlement from Four Corners of 970 MW. Additionally, 4CA, a wholly-owned subsidiary of Pinnacle West, owns 7% of Units 4 and 5 following its acquisition of El Paso's interest in these units described below.

On December 30, 2013, APS purchased SCE's 48% interest in each of Units 4 and 5 of Four Corners. The final purchase price for the interest was approximately \$182 million. In connection with APS's prior retail

rate case with the ACC, the ACC reserved the right to review the prudence of the Four Corners transaction for cost recovery purposes upon the closing of the transaction. On December 23, 2014, the ACC approved rate adjustments related to APS's acquisition of SCE's interest in Four Corners resulting in a revenue increase of \$57.1 million on an annual basis. On February 23, 2015, the ACC decision approving the rate adjustments was appealed. APS has intervened and is actively participating in the proceeding. The Arizona Court of Appeals suspended the appeal pending the Arizona Supreme Court's decision in the System Improvement Benefits ("SIB") matter discussed in Note 3. On August 8, 2016, the Arizona Supreme Court issued its opinion in the SIB matter, and the Arizona Court of Appeals has now ordered supplemental briefing on how that SIB decision should affect the challenge to the Four Corners rate adjustment. We cannot predict when or how this matter will be resolved.

Concurrently with the closing of the SCE transaction, BHP Billiton, the parent company of BNCC, the coal supplier and operator of the mine that serves Four Corners, transferred its ownership of BNCC to NTEC, a company formed by the Navajo Nation to own the mine and develop other energy projects. BHP Billiton was retained by NTEC under contract as the mine manager and operator through 2016. Also occurring concurrently with the closing, the Four Corners' co-owners executed a long-term agreement for the supply of coal to Four Corners from July 2016 through 2031 (the "2016 Coal Supply Agreement"). El Paso, a 7% owner in Units 4 and 5 of Four Corners, did not sign the 2016 Coal Supply Agreement. Under the 2016 Coal Supply Agreement, APS agreed to assume the 7% shortfall obligation. On February 17, 2015, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in each of Units 4 and 5 of Four Corners. 4CA purchased the El Paso interest on July 6, 2016. The purchase price was immaterial in amount, and 4CA assumed El Paso's reclamation and decommissioning obligations associated with the 7% interest.

NTEC has the option to purchase the 7% interest within a certain timeframe pursuant to an option granted to NTEC. On December 29, 2015, NTEC provided notice of its intent to exercise the option. The 2016 Coal Supply Agreement contains alternate pricing terms for the 7% shortfall obligations in the event NTEC does not purchase the interest.

APS, on behalf of the Four Corners participants, negotiated amendments to an existing facility lease with the Navajo Nation, which extends the Four Corners leasehold interest from 2016 to 2041. The Navajo Nation approved these amendments in March 2011. The effectiveness of the amendments also required the approval of the DOI, as did a related federal rights-of-way grant. A federal environmental review was undertaken as part of the DOI review process, and culminated in the issuance by DOI of a record of decision on July 17, 2015 justifying the agency action extending the life of the plant and the adjacent mine.

On April 20, 2016, several environmental groups filed a lawsuit against OSM and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the Endangered Species Act ("ESA") and the National Environmental Policy Act ("NEPA") in providing the federal approvals necessary to extend operations at Four Corners and the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016. Briefing on the merits of this litigation is expected to extend through May 2017. On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. Because the court has placed a stay on all litigation deadlines pending its decision regarding NTEC's motion to dismiss, the schedule for briefing and the anticipated timeline for completion of this litigation will likely be extended. We cannot predict the outcome of this matter or its potential effect on Four Corners.

Cholla — Cholla was originally a 4-unit coal-fired power plant, which is located in northeastern Arizona. APS operates the plant and owns 100% of Cholla Units 1, 2 and 3. PacifiCorp owns Cholla Unit 4,

and APS operates that unit for PacifiCorp. On September 11, 2014, APS announced that it would close its 260 MW Unit 2 at Cholla and cease burning coal at Units 1 and 3 by the mid-2020s if EPA approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit. (See Note 3 for details related to the resulting regulatory asset and Note 10 for details of the proposal.) APS believes that the environmental benefits of this proposal are greater in the long-term than the benefits that would have resulted from adding the emissions control equipment. APS closed Unit 2 on October 1, 2015. Following the closure of Unit 2, APS has a total entitlement from Cholla of 387 MW.

On January 13, 2017, EPA approved a final rule incorporating APS's compromise approach. Once the final rule is published in the Federal Register, parties have 60 days to file a petition for review in the Ninth Circuit Court of Appeals. APS cannot predict at this time whether such petitions will be filed or if they will be successful. In addition, under the terms of an executive memorandum issued on January 20, 2017, this final rule will not be published in the Federal Register until after it has been reviewed by an appointee of the President. We cannot predict when such review will occur and what may result from the additional review.

APS purchases all of Cholla's coal requirements from a coal supplier, an affiliate of Peabody Energy Corporation, that mines all of the coal under long-term leases of coal reserves with the federal and state governments and private landholders. On April 13, 2016, Peabody Energy Corporation and certain affiliated entities filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri. Under the Coal Supply Agreement, dated December 21, 2005, Peabody supplied coal to APS and PacifiCorp (collectively, the "Buyers") for use at Cholla. APS believes that the Coal Supply Agreement terminated automatically on April 13, 2016 as a result of Peabody's bankruptcy filing. The Buyers filed a motion requesting that the Bankruptcy Court enter an order determining that the Buyers are authorized to enforce the termination provisions in the Coal Supply Agreement.

On May 13, 2016, Peabody filed a complaint against the Buyers in the bankruptcy court in which Peabody alleged that the Buyers breached the Coal Supply Agreement. On January 27, 2017, the bankruptcy court approved a settlement between the parties, and on February 6, 2017 the parties executed an amendment to the Coal Supply Agreement that allows for continuation of the agreement with modified terms and conditions acceptable to the parties.

APS has a long-term coal transportation by rail contract that expires in 2017.

Navajo Generating Station — The Navajo Plant is a 3-unit coal-fired power plant located in northern Arizona. Salt River Project operates the plant and APS owns a 14% interest in Navajo Units 1, 2 and 3. APS has a total entitlement from the Navajo Plant of 315 MW. The Navajo Plant's coal requirements are purchased from a supplier with long-term leases from the Navajo Nation and the Hopi Tribe. The Navajo Plant is under contract with its coal supplier through 2019, with extension rights through 2026. The Navajo Plant site is leased from the Navajo Nation and is also subject to an easement from the federal government. The current lease expires in 2019.

On February 13, 2017, the co-owners of the Navajo Plant voted not to pursue continued operation of the plant beyond December 2019, the expiration of the current lease term, and to pursue a new lease or lease extension with the Navajo Nation that would allow decommissioning activities to begin after December 2019 instead of later this year. Various stakeholders including regulators, tribal representatives and others interested in the continued operation of the plant intend to meet to determine if an alternate solution can be reached that would permit continued operation of the plant beyond 2019. We cannot predict whether any alternate solutions will be found that would be acceptable to all of the stakeholders and feasible to implement. APS is currently

recovering depreciation and a return on the net book value of its interest in the Navajo Plant. APS will seek continued recovery in rates for the book value of its remaining investment in the plant (\$108 million as of December 31, 2016) plus a return on the net book value as well as other costs related to retirement and closure, which are still being assessed and which may be material. We cannot predict whether APS would obtain such recovery.

On February 14, 2017, the ACC opened a docket titled "ACC Investigation Concerning the Future of the Navajo Generating Station" with the stated goal of engaging stakeholders and negotiating a sustainable pathway for the Navajo Plant to continue operating in some form after December 2019. APS cannot predict the outcome of this proceeding.

These coal-fueled plants face uncertainties, including those related to existing and potential legislation and regulation, that could significantly impact their economics and operations. See "Environmental Matters" below and "Management's Discussion and Analysis of Financial Condition and Results of Operations — Overview and Capital Expenditures" in Item 7 for developments impacting these coal-fueled facilities. See Note 10 for information regarding APS's coal mine reclamation obligations.

Nuclear

Palo Verde Nuclear Generating Station — Palo Verde is a 3-unit nuclear power plant located approximately 50 miles west of Phoenix, Arizona. APS operates the plant and owns 29.1% of Palo Verde Units 1 and 3 and approximately 17% of Unit 2. In addition, APS leases approximately 12.1% of Unit 2, resulting in a 29.1% combined ownership and leasehold interest in that unit. APS has a total entitlement from Palo Verde of 1,146 MW.

Palo Verde Leases — In 1986, APS entered into agreements with three separate lessor trust entities in order to sell and lease back approximately 42% of its share of Palo Verde Unit 2 and certain common facilities. The leaseback was originally scheduled to expire at the end of 2015 and contained options to renew the leases or to purchase the leased property for fair market value at the end of the lease terms. On July 7, 2014, APS exercised the fixed rate lease renewal options. The exercise of the renewal options resulted in APS retaining the assets through 2023 under one lease and 2033 under the other two leases. At the end of the lease renewal periods, APS will have the option to purchase the leased assets at their fair market value, extend the leases for up to two years, or return the assets to the lessors. See Note 18 for additional information regarding the Palo Verde Unit 2 sale leaseback transactions.

Palo Verde Operating Licenses — Operation of each of the three Palo Verde Units requires an operating license from the NRC. The NRC issued full power operating licenses for Unit 1 in June 1985, Unit 2 in April 1986 and Unit 3 in November 1987, and issued renewed operating licenses for each of the three units in April 2011, which extended the licenses for Units 1, 2 and 3 to June 2045, April 2046 and November 2047, respectively.

Palo Verde Fuel Cycle — The Palo Verde participants are continually identifying their future nuclear fuel resource needs and negotiating arrangements to fill those needs. The fuel cycle for Palo Verde is comprised of the following stages:

- mining and milling of uranium ore to produce uranium concentrates;
- conversion of uranium concentrates to uranium hexafluoride;
- enrichment of uranium hexafluoride;
- fabrication of fuel assemblies;
- utilization of fuel assemblies in reactors; and
- storage and disposal of spent nuclear fuel.

The Palo Verde participants have contracted for 100% of Palo Verde's requirements for uranium concentrates and conversion services through 2018 and 45% of its requirements in 2019-2025. The participants have also contracted for 100% of Palo Verde's enrichment services through 2020 and 20% of its enrichment services for 2021-2026; and all of Palo Verde's fuel assembly fabrication services through 2024.

Spent Nuclear Fuel and Waste Disposal — The Nuclear Waste Policy Act of 1982 ("NWPA") required the DOE to accept, transport, and dispose of spent nuclear fuel and high level waste generated by the nation's nuclear power plants by 1998. The DOE's obligations are reflected in a contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (the "Standard Contract") with each nuclear power plant. The DOE failed to begin accepting spent nuclear fuel by 1998. APS is directly and indirectly involved in several legal proceedings related to DOE's failure to meet its statutory and contractual obligations regarding acceptance of spent nuclear fuel and high level waste.

APS Lawsuit for Breach of Standard Contract — In December 2003, APS, acting on behalf of itself and the participant owners of Palo Verde, filed a lawsuit against DOE in the United States Court of Federal Claims ("Court of Federal Claims") for damages incurred due to DOE's breach of the Standard Contract. The Court of Federal Claims ruled in favor of APS and the Palo Verde participants in October 2010 and awarded \$30.2 million in damages to APS and the Palo Verde participants for costs incurred through December 2006.

On December 19, 2012, APS, acting on behalf of itself and the participant owners of Palo Verde, filed a second breach of contract lawsuit against the DOE in the Court of Federal Claims. This lawsuit sought to recover damages incurred due to DOE's breach of the Standard Contract for failing to accept Palo Verde's spent nuclear fuel and high level waste from January 1, 2007 through June 30, 2011, as it was required to do pursuant to the terms of the Standard Contract and the Nuclear Waste Policy Act. On August 18, 2014, APS and DOE entered into a settlement agreement, stipulating to a dismissal of the lawsuit and payment of \$57.4 million by DOE to the Palo Verde owners for certain specified costs incurred by Palo Verde during the period January 1, 2007 through June 30, 2011. APS's share of this amount is \$16.7 million. Amounts recovered in the lawsuit and settlement were recorded as adjustments to a regulatory liability and had no impact on the amount of reported net income. In addition, the settlement agreement provides APS with a method for submitting claims and getting recovery for costs incurred through December 31, 2016, which has been extended to December 31, 2019.

APS has submitted two claims pursuant to the terms of the August 18, 2014 settlement agreement, for two separate time periods during July 1, 2011 through June 30, 2015. The DOE has approved and paid \$53.9 million for these claims (APS's share is \$15.7 million). The amounts recovered were primarily recorded as adjustments to a regulatory liability and had no impact on reported net income. APS's next claim pursuant to the terms of the August 18, 2014 settlement agreement was submitted to the DOE on October 31, 2016, and approved on February 1, 2017, in the amount \$11.3 million (APS's share is \$3.3 million). Payment for the claim is expected in the second quarter of 2017.

The One-Mill Fee — In 2011, the National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute challenged DOE's 2010 determination of the adequacy of the one tenth of a cent per kWh fee (the "one-mill fee") paid by the nation's commercial nuclear power plant owners pursuant to their individual obligations under the Standard Contract. This fee is recovered by APS in its retail rates. In June 2012, the U.S. Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") held that DOE failed to conduct a sufficient fee analysis in making the 2010 determination. The D.C. Circuit remanded the 2010 determination to the Secretary of the DOE ("Secretary") with instructions to conduct a new fee adequacy determination within six months. In February 2013, upon completion of DOE's revised one-mill fee adequacy determination, the D.C. Circuit reopened the proceedings. On November 19, 2013, the D.C. Circuit found that the DOE did not conduct a legally adequate fee assessment and ordered the Secretary to notify Congress of his

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intent to suspend collecting annual fees for nuclear waste disposal from nuclear power plant operators, as he is required to do pursuant to the NWPA and the D.C. Circuit's order. On January 3, 2014, the Secretary notified Congress of his intention to suspend collection of the one-mill fee, subject to Congress' disapproval. On May 16, 2014, the DOE notified all commercial nuclear power plant operators who are party to a Standard Contract that it reduced the one-mill fee to zero, thus effectively terminating the one-mill fee.

DOE's Construction Authorization Application for Yucca Mountain — The DOE had planned to meet its NWPA and Standard Contract disposal obligations by designing, licensing, constructing, and operating a permanent geologic repository at Yucca Mountain, Nevada. In June 2008, the DOE submitted its Yucca Mountain construction authorization application to the NRC, but in March 2010, the DOE filed a motion to dismiss with prejudice the Yucca Mountain construction authorization application. Several interested parties have also intervened in the NRC proceeding. Additionally, a number of interested parties filed a variety of lawsuits in different jurisdictions around the country challenging the DOE's authority to withdraw the Yucca Mountain construction authorization application and NRC's cessation of its review of the Yucca Mountain construction authorization application. The cases have been consolidated into one matter at the D.C. Circuit. In August 2013, the D.C. Circuit ordered the NRC to resume its review of the application with available appropriated funds.

On October 16, 2014, the NRC issued Volume 3 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume addresses repository safety after permanent closure, and its issuance is a key milestone in the Yucca Mountain licensing process. Volume 3 contains the staff's finding that the DOE's repository design meets the requirements that apply after the repository is permanently closed, including but not limited to the post-closure performance objectives in NRC's regulations.

On December 18, 2014, the NRC issued Volume 4 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume covers administrative and programmatic requirements for the repository. It documents the staff's evaluation of whether the DOE's research and development and performance confirmation programs, as well as other administrative controls and systems, meet applicable NRC requirements. Volume 4 contains the staff's finding that most administrative and programmatic requirements in NRC regulations are met, except for certain requirements relating to ownership of land and water rights.

Publication of Volumes 3 and 4 does not signal whether or when the NRC might authorize construction of the repository.

Waste Confidence and Continued Storage — On June 8, 2012, the D.C. Circuit issued its decision on a challenge by several states and environmental groups of the NRC's rulemaking regarding temporary storage and permanent disposal of high level nuclear waste and spent nuclear fuel. The petitioners had challenged the NRC's 2010 update to the agency's Waste Confidence Decision and temporary storage rule ("Waste Confidence Decision").

The D.C. Circuit found that the agency's 2010 Waste Confidence Decision update constituted a major federal action, which, consistent with NEPA, requires either an environmental impact statement or a finding of no significant impact from the agency's actions. The D.C. Circuit found that the NRC's evaluation of the environmental risks from spent nuclear fuel was deficient, and therefore remanded the 2010 Waste Confidence Decision update for further action consistent with NEPA.

On September 6, 2012, the NRC Commissioners issued a directive to the NRC staff to proceed directly with development of a generic environmental impact statement to support an updated Waste Confidence

Decision. The NRC Commissioners also directed the staff to establish a schedule to publish a final rule and environmental impact study within 24 months of September 6, 2012.

In September 2013, the NRC issued its draft Generic Environmental Impact Statement ("GEIS") to support an updated Waste Confidence Decision. On August 26, 2014, the NRC approved a final rule on the environmental effects of continued storage of spent nuclear fuel. Renamed as the Continued Storage Rule, the NRC's decision adopted the findings of the GEIS regarding the environmental impacts of storing spent fuel at any reactor site after the reactor's licensed period of operations. As a result, those generic impacts do not need to be reanalyzed in the environmental reviews for individual licenses. Although Palo Verde had not been involved in any licensing actions affected by the D.C. Circuit's June 8, 2012, decision, the NRC lifted its suspension on final licensing actions on all nuclear power plant licenses and renewals that went into effect when the D.C. Circuit issued its June 2012 decision. The final Continued Storage Rule was subject to continuing legal challenges before the NRC and the Court of Appeals. In June 2016, the D.C. Circuit issued its final decision, rejecting all remaining legal challenges to the Continued Storage Rule. On August 8, 2016, the D.C. Circuit denied a petition for rehearing.

Palo Verde has sufficient capacity at its on-site independent spent fuel storage installation ("ISFSI") to store all of the nuclear fuel that will be irradiated during the initial operating license period, which ends in December 2027. Additionally, Palo Verde has sufficient capacity at its on-site ISFSI to store a portion of the fuel that will be irradiated during the period of extended operation, which ends in November 2047. If uncertainties regarding the United States government's obligation to accept and store spent fuel are not favorably resolved, APS will evaluate alternative storage solutions that may obviate the need to expand the ISFSI to accommodate all of the fuel that will be irradiated during the period of extended operation.

Nuclear Decommissioning Costs — APS currently relies on an external sinking fund mechanism to meet the NRC financial assurance requirements for decommissioning its interests in Palo Verde Units 1, 2 and 3. The decommissioning costs of Palo Verde Units 1, 2 and 3 are currently included in APS's ACC jurisdictional rates. Decommissioning costs are recoverable through a non-bypassable system benefits charge (paid by all retail customers taking service from the APS system). Based on current nuclear decommissioning trust asset balances, site specific decommissioning cost studies, anticipated future contributions to the decommissioning trusts, and return projections on the asset portfolios over the expected remaining operating life of the facility, we are on track to meet the current site specific decommissioning costs for Palo Verde at the time the units are expected to be decommissioned. See Note 19 for additional information about APS's nuclear decommissioning trusts.

Palo Verde Liability and Insurance Matters — See "Palo Verde Nuclear Generating Station — Nuclear Insurance" in Note 10 for a discussion of the insurance maintained by the Palo Verde participants, including APS, for Palo Verde.

Natural Gas and Oil Fueled Generating Facilities

APS has six natural gas power plants located throughout Arizona, consisting of Redhawk, located near Palo Verde; Ocotillo, located in Tempe (discussed below); Sundance, located in Coolidge; West Phoenix, located in southwest Phoenix; Saguaro, located north of Tucson; and Yucca, located near Yuma. Several of the units at Yucca run on either gas or oil. APS has one oil-only power plant, Douglas, located in the town of Douglas, Arizona. APS owns and operates each of these plants with the exception of one oil-only combustion turbine unit and one oil and gas steam unit at Yucca that are operated by APS and owned by the Imperial Irrigation District. APS has a total entitlement from these plants of 3,179 MW. Gas for these plants is financially hedged up to three years in advance of purchasing and the gas is generally purchased one month prior to delivery. APS has long-term gas transportation agreements with three different companies, some of

which are effective through 2024. Fuel oil is acquired under short-term purchases delivered primarily to West Phoenix, where it is distributed to APS's other oil power plants by truck.

Ocotillo is a 330 MW 4-unit gas plant located in the metropolitan Phoenix area. In early 2014, APS announced a project to modernize the plant, which involves retiring two older 110 MW steam units, adding five 102 MW combustion turbines and maintaining two existing 55 MW combustion turbines. In total, this increases the capacity of the site by 290 MW, to 620 MW, with completion targeted by summer 2019. (See Note 3 for proposed rate recovery in our current retail rate case.) On September 9, 2016, Maricopa County issued a final permit decision that authorizes construction of the Ocotillo modernization project and construction will begin in early 2017.

Solar Facilities

APS developed utility scale solar resources through the 170 MW ACC-approved AZ Sun Program. APS invested approximately \$675 million in its AZ Sun Program. These facilities are owned by APS and are located in multiple locations throughout Arizona. In 2016, APS developed the 40MW Red Rock Solar Plant, which it owns and operates. Two of our large customers will purchase renewable energy credits from APS that is equivalent to the amount of renewable energy that Red Rock is projected to generate.

Additionally, APS owns and operates more than forty small solar systems around the state. Together they have the capacity to produce approximately 4 MW of renewable energy. This fleet of solar systems includes a 3 MW facility located at the Prescott Airport and 1 MW of small solar in various locations across Arizona. APS has also developed solar photovoltaic distributed energy systems installed as part of the Community Power Project in Flagstaff, Arizona. The Community Power Project, approved by the ACC on April 1, 2010, is a pilot program through which APS owns, operates and receives energy from approximately 1 MW of solar photovoltaic distributed energy systems located within a certain test area in Flagstaff, Arizona. Additionally, APS owns 12 MW of solar photovoltaic systems installed across Arizona through the ACC-approved Schools and Government Program.

In December 2014, the ACC voted that it had no objection to APS implementing an APS-owned rooftop solar research and development program aimed at learning how to efficiently enable the integration of rooftop solar and battery storage with the grid. The first stage of the program, called the "Solar Partner Program," placed 8 MW of residential rooftop solar on strategically selected distribution feeders in an effort to maximize potential system benefits, as well as made systems available to limited-income customers who could not easily install solar through transactions with third parties. The second stage of the program, which included an additional 2 MW of rooftop solar and energy storage, placed two energy storage systems sized at 2 MW on two different high solar penetration feeders to test various grid-related operation improvements and system interoperability, and was in operation by the end of 2016. The ACC expressly reserved that any determination of prudency of the residential rooftop solar program for rate making purposes would not be made until the project was fully in service, and APS has requested cost recovery for the project in its currently pending rate case. On September 30, 2016, APS presented its preliminary findings from the residential rooftop solar program in a filing with the ACC.

Purchased Power Contracts

In addition to its own available generating capacity, APS purchases electricity under various arrangements, including long-term contracts and purchases through short-term markets to supplement its owned or leased generation and hedge its energy requirements. A portion of APS's purchased power expense is netted against wholesale sales on the Consolidated Statements of Income. (See Note 16.) APS continually assesses its need for additional capacity resources to assure system reliability.

Purchased Power Capacity — APS's purchased power capacity under long-term contracts as of December 31, 2016 is summarized in the table below. All capacity values are based on net capacity unless otherwise noted.

Туре	Dates Available	Capacity (MW)	
Purchase Agreement (a)	Year-round through June 14, 2020	60	
Exchange Agreement (b)	May 15 to September 15 annually through February 2021	480	
Tolling Agreement	Year-round through May 2017	514	
Tolling Agreement	Summer seasons through October 2019	560	
Demand Response Agreement (c)	Summer seasons through 2024	25	
Tolling Agreement (d)	Summer seasons from Summer 2020 through Summer 2025	565	
Renewable Energy (e)	Various	629	

- (a) Up to 60 MW of capacity is available; however, the amount of electricity available to APS under this agreement is based in large part on customer demand and is adjusted annually.
- (b) This is a seasonal capacity exchange agreement under which APS receives electricity during the summer peak season (from May 15 to September 15) and APS returns a like amount of electricity during the winter season (from October 15 to February 15).
- (c) The capacity under this agreement may be increased in 5 MW increments in each of 2015 and 2016 and 10 MW increments in years 2017 through 2024, up to a maximum of 50 MW.
- (d) This agreement was signed in response to APS's 2016 all source request for proposal seeking capacity resources.
- (e) Renewable energy purchased power agreements are described in detail below under "Current and Future Resources Renewable Energy Standard Renewable Energy Portfolio."

Current and Future Resources

Current Demand and Reserve Margin

Electric power demand is generally seasonal. In Arizona, demand for power peaks during the hot summer months. APS's 2016 peak one-hour demand on its electric system was recorded on June 19, 2016 at 7,051 MW, compared to the 2015 peak of 7,031 MW recorded on August 15, 2015. APS's reserve margin at the time of the 2016 peak demand, calculated using system load serving capacity, was 30%. For 2017, due to expiring purchase contracts, APS is procuring market resources to maintain its minimum 15% planning reserve criteria.

Future Resources and Resource Plan

APS filed its preliminary 2017 Integrated Resource Plan on March 1, 2016 and an updated preliminary 2017 Integrated Resource Plan on September 30, 2016. APS also held stakeholder meetings in February and November 2016 in addition to an ACC-led Integrated Resource Plan workshop in July 2016. The preliminary Integrated Resource Plan and associated stakeholder meetings are part of a modified planning process that allows time to incorporate implications of the Clean Power Plan as well as input from stakeholder meetings. The final Integrated Resource Plan will be submitted by or on April 3, 2017 and the ACC is expected to complete its review by February 1, 2018.

On September 11, 2014, APS announced that it would close Cholla Unit 2 and cease burning coal at the other APS-owned units (Units 1 and 3) at the plant by the mid-2020s, if EPA approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit. APS closed Unit 2 on October 1, 2015. Previously, APS estimated Cholla

Unit 2's end of life to be 2033. APS is currently recovering a return on and of the net book value of the unit in base rates and is seeking recovery of the unit's decommissioning and other retirement-related costs over the remaining life of the plant in its current retail rate case. APS believes it will be allowed recovery of the remaining net book value of Unit 2 (\$116 million as of December 31, 2016), in addition to a return on its investment. In accordance with GAAP, in the third quarter of 2014, Unit 2's remaining net book value was reclassified from property, plant and equipment to a regulatory asset. If the ACC does not allow full recovery of the remaining net book value of Cholla Unit 2, all or a portion of the regulatory asset will be written off and APS's net income, eash flows, and financial position will be negatively impacted. (See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Cholla" above for details regarding the status of the EPA's rule related to Cholla.)

See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Navajo Generating Station" above for information regarding future plans for the Navajo Plant.

Energy Imbalance Market

In 2015, APS and the CAISO, the operator for the majority of California's transmission grid, signed an agreement for APS to begin participation in the Energy Imbalance Market ("EIM"). APS's participation in the EIM began on October 1, 2016. The EIM allows for rebalancing supply and demand in 15-minute blocks with dispatching every five minutes before the energy is needed, instead of the traditional one hour blocks. APS expects that its participation in EIM will lower its fuel costs, improve visibility and situational awareness for system operations in the Western Interconnection power grid, and improve integration of APS's renewable resources.

Renewable Energy Standard

In 2006, the ACC adopted the RES. Under the RES, electric utilities that are regulated by the ACC must supply an increasing percentage of their retail electric energy sales from eligible renewable resources, including solar, wind, biomass, biogas and geothermal technologies. The renewable energy requirement is 7% of retail electric sales in 2017 and increases annually until it reaches 15% in 2025. In APS's 2009 retail rate case settlement agreement (the "2009 Settlement Agreement"), APS committed to have 1,700 GWh of new renewable resources in service by year-end 2015 in addition to its RES renewable resource commitments. APS met its settlement commitment and RES target for 2016.

A component of the RES is focused on stimulating development of distributed energy systems. Accordingly, under the RES, an increasing percentage of that requirement must be supplied from distributed energy resources. This distributed energy requirement is 30% of the overall RES requirement of 7% in 2017. The following table summarizes the RES requirement standard (not including the additional commitment required by the 2009 Settlement Agreement) and its timing:

	2017	2020	2025
RES as a % of retail electric sales	7%	10%	15%
Percent of RES to be supplied from distributed energy resources	30%	30%	30%

On April 21, 2015, the RES rules were amended to require utilities to report on all eligible renewable resources in their service territory, irrespective of whether the utility owns renewable energy credits associated with such renewable energy. The rules allow the ACC to consider such information in determining whether APS has satisfied the requirements of the RES.

Renewable Energy Portfolio. To date, APS has a diverse portfolio of existing and planned renewable resources totaling 1,480 MW, including solar, wind, geothermal, biomass and biogas. Of this portfolio, 1,440 MW are currently in operation and 40 MW are under contract for development or are under construction. Renewable resources in operation include 239 MW of facilities owned by APS, 629 MW of long-term purchased power agreements, and an estimated 539 MW of customer-sited, third-party owned distributed energy resources.

APS's strategy to achieve its RES requirements includes executing purchased power contracts for new facilities, ongoing development of distributed energy resources and procurement of new facilities to be owned by APS. See "Energy Sources and Resource Planning - Generation Facilities" above for information regarding APS-owned solar facilities.

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The following table summarizes APS's renewable energy sources currently in operation and under development. Agreements for the development and completion of future resources are subject to various conditions, including successful siting, permitting and interconnection of the projects to the electric grid.

	Location	Actual/ Target Commercial Operation Date	Term (Years)	Net Capacity In Operation (MW AC)	Net Capacity Planned/Under Development (MW AC)
APS Owned	Location		(11.11.5)		
iolar:					
AZ Sun Program:					
Paloma	Gila Bend, AZ	2011		17	
Cotton Center	Gila Bend, AZ	2011		17	
Hyder Phase 1	Hyder, AZ	2011		-11	
Hyder Phase 2	Hyder, AZ	2012		5	
Chino Valley	Chino Valley, AZ	2012		19	
Hyder II	Hyder, AZ	2013		14	
Foothills	Yuma, AZ	2013		35	
Gilà Bend	Gila Bend, AZ	2014		32	
Luke AFB	Glendale, AZ	2015		10	
Desert Star	Buckeye, AZ	2015		10	
Subtotal AZ Sun Program	(1964) - 2000000 (19600			170	
fultiple Facilities	AZ	Various		:4	
ed Rock	Red Rock, AZ	2016		40	
Istributed Energy:					
APS Owned (a)	AZ	Various		25	
otal APS Owned				239	· ·
urchased Power Agreements					
olar:					
Solana	Gila Bend, AZ	2013	30	250	
RE Ajo	Ajo, AZ	2011	25	5	
Sun E AZ 1	Prescott, AZ	2011	30	10	
Saddle Mountain	Tonopah, AZ	2012	30	15	
Badger	Tonopah, AZ	2013	30	15	
Gillespic	Maricopa County, AZ	2013	30	15	
'ind:					
Aragonne Mesa	Santa Rosa, NM	2006	20	90	
High Lonesome	Mountainair, NM	2009	30	100	
Perrin Ranch Wind	Williams, AZ	2012	25	99	
eothermal:					
Salton Sea	Imperial County, CA	2006	23	10	
iomass:					
Snowflake	Snowflake, AZ	2008	15	14	
iogas:					
Glendale Landfill	Glendale, AZ	2010	20	3	
NW Regional Landfill	Surprise, AZ	2012	20	3	
otal Purchased Power Agreements				629	_
stributed Energy					
olar (b)					
Third-party Owned	AZ	Various		539	40
Agreement 1	Bagdad, AZ	2011	25	15	
Agreement 2	AZ	2011-2012	20-21	18	
otal Distributed Energy				572	40
otal Renewable Portfolio				1,440	40

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- (a) Includes Flagstaff Community Power Project, APS School and Government Program and APS Solar Partner Program.
- (b) Includes rooftop solar facilities owned by third parties. Distributed generation is produced in DC and is converted to AC for reporting purposes.

Demand Side Management

In December 2009, Arizona regulators placed an increased focus on energy efficiency and other demand side management programs to encourage customers to conserve energy, while incentivizing utilities to aid in these efforts that ultimately reduce the demand for energy. The ACC initiated its Energy Efficiency rulemaking, with a proposed Energy Efficiency Standard ("EES") of 22% cumulative annual energy savings by 2020. This standard was adopted and became effective on January 1, 2011. This standard will likely impact Arizona's future energy resource needs. (See Note 3 for energy efficiency and other demand side management obligations).

Competitive Environment and Regulatory Oversight

Retail

The ACC regulates APS's retail electric rates and its issuance of securities. The ACC must also approve any significant transfer or encumbrance of APS's property used to provide retail electric service and approve or receive prior notification of certain transactions between Pinnacle West, APS and their respective affiliates.

APS is subject to varying degrees of competition from other investor-owned electric and gas utilities in Arizona (such as Southwest Gas Corporation), as well as cooperatives, municipalities, electrical districts and similar types of governmental or non-profit organizations. In addition, some customers, particularly industrial and large commercial customers, may own and operate generation facilities to meet some or all of their own energy requirements. This practice is becoming more popular with customers installing or having installed products such as rooftop solar panels to meet or supplement their energy needs.

On April 14, 2010, the ACC issued a decision holding that solar vendors that install and operate solar facilities for non-profit schools and governments pursuant to a specific type of contract that calculates payments based on the energy produced are not "public service corporations" under the Arizona Constitution, and are therefore not regulated by the ACC. APS cannot predict when, and the extent to which, additional electric service providers will enter or re-enter APS's service territory.

On May 9, 2013, the ACC voted to re-examine the facilitation of a deregulated retail electric market in Arizona. The ACC subsequently opened a docket for this matter and received comments from a number of interested parties on the considerations involved in establishing retail electric deregulation in the state. One of these considerations was whether various aspects of a deregulated market, including setting utility rates on a "market" basis, would be consistent with the requirements of the Arizona Constitution. On September 11, 2013, after receiving legal advice from the ACC staff, the ACC voted 4-1 to close the current docket and await full Arizona Constitutional authority before any further examination of this matter. The motion approved by the ACC also included opening one or more new dockets in the future to explore options to offer more rate choices to customers and innovative changes within the existing cost-of-service regulatory model that could include elements of competition. The ACC opened a docket on November 4, 2013 to explore technological advances and innovative changes within the electric utility industry. A series of workshops in this docket were held in 2014 and another in February of 2015. No further workshops are scheduled and no actions were taken as a result of these workshops.

Wholesale

FERC regulates rates for wholesale power sales and transmission services. (See Note 3 for information regarding APS's transmission rates.) During 2016, approximately 3.5% of APS's electric operating revenues resulted from such sales and services. APS's wholesale activity primarily consists of managing fuel and purchased power supplies to serve retail customer energy requirements. APS also sells, in the wholesale market, its generation output that is not needed for APS's Native Load and, in doing so, competes with other utilities, power marketers and independent power producers. Additionally, subject to specified parameters, APS hedges both electricity and fuels. The majority of these activities are undertaken to mitigate risk in APS's portfolio.

Subpoena from Arizona Corporation Commissioner Robert Burns

On August 25, 2016, Commissioner Burns, individually and not by action of the ACC as a whole, filed subpoenas in APS's current retail rate proceeding to APS and Pinnacle West for the production of records and information relating to a range of expenditures from 2011 through 2016. The subpoenas requested information concerning marketing and advertising expenditures, charitable donations, lobbying expenses, contributions to 501(c)(3) and (c)(4) nonprofits and political contributions. The return date for the production of information was set as September 15, 2016. The subpoenas also sought testimony from Company personnel having knowledge of the material, including the Chief Executive Officer.

On September 9, 2016, APS filed with the ACC a motion to quash the subpoenas or, alternatively to stay APS's obligations to comply with the subpoenas and decline to decide APS's motion pending court proceedings. Contemporaneously with the filing of this motion, APS and Pinnacle West filed a complaint for special action and declaratory judgment in the Superior Court of Arizona for Maricopa County, seeking a declaratory judgment that Commissioner Burns' subpoenas are contrary to law. On September 15, 2016, APS produced all non-confidential and responsive documents and offered to produce any remaining responsive documents that are confidential after an appropriate confidentiality agreement is signed.

On February 7, 2017, Commissioner Burns opened a new ACC docket and indicated that its purpose is to study and rectify problems with transparency and disclosure regarding financial contributions from regulated monopolies or other stakeholders who may appear before the ACC that may directly or indirectly benefit an ACC Commissioner, a candidate for ACC Commissioner, or key ACC staff. As part of this docket, Commissioner Burns set March 24, 2017 as a deadline for APS to produce all information previously requested through the subpoenas. Commissioner Burns has also scheduled a workshop in this matter for March 17, 2017. APS and Pinnacle West cannot predict the outcome of this matter.

Environmental Matters

Climate Change

Legislative Initiatives. There have been no recent attempts by Congress to pass legislation that would regulate greenhouse gas ("GHG") emissions, and it is doubtful whether the 115 th Congress will consider a climate change bill. In the event climate change legislation ultimately passes, the actual economic and operational impact of such legislation on APS depends on a variety of factors, none of which can be fully known until a law is written, enacted and the specifics of the resulting program are established. These factors include the terms of the legislation with regard to allowed GHG emissions; the cost to reduce emissions; in the event a cap-and-trade program is established, whether any permitted emissions allowances will be allocated to source operators free of cost or auctioned (and, if so, the cost of those allowances in the marketplace) and

whether offsets and other measures to moderate the costs of compliance will be available; and, in the event of a carbon tax, the amount of the tax per pound of carbon dioxide ("CO 2") equivalent emitted.

In addition to federal legislative initiatives, state-specific initiatives may also impact our business. While Arizona has no pending legislation and no proposed agency rule regulating GHGs in Arizona, the California legislature enacted AB 32 and SB 1368 in 2006 to address GHG emissions. In October 2011, the California Air Resources Board approved final regulations that established a state-wide cap on GHG emissions beginning on January 1, 2013 and established a GHG allowance trading program under that cap. The first phase of the program, which applies to, among other entities, importers of electricity, commenced on January 1, 2013. Under the program, entities selling electricity into California, including APS, must hold carbon allowances to cover GHG emissions associated with electricity sales into California from outside the state. APS is authorized to recover the cost of these carbon allowances through the PSA.

Regulatory Initiatives. In 2009, EPA determined that GHG emissions endanger public health and welfare. As a result of this "endangerment finding," EPA determined that the Clean Air Act required new regulatory requirements for new and modified major GHG emitting sources, including power plants. APS will generally be required to consider the impact of GHG emissions as part of its traditional New Source Review ("NSR") analysis for new major sources and major modifications to existing plants.

On June 2, 2014, EPA issued two proposed rules to regulate GHG emissions from modified and reconstructed electric generating units ("EGUs") pursuant to Section 111(b) of the Clean Air Act and existing fossil fuel-fired power plants pursuant to Clean Air Act Section 111(d).

On August 3, 2015, EPA finalized carbon pollution standards for existing, new, modified, and reconstructed EGUs. EPA's final rules require newly built fossil fuel-fired EGUs, along with those undergoing modification or reconstruction, to meet CO2 performance standards based on a combination of best operating practices and equipment upgrades. EPA established separate performance standards for two types of EGUs: stationary combustion turbines, typically natural gas; and electric utility steam generating units, typically coal.

With respect to existing power plants, EPA's recently finalized "Clean Power Plan" imposes state-specific goals or targets to achieve reductions in CO 2 emission rates from existing EGUs measured from a 2012 baseline. In a significant change from the proposed rule, EPA's final performance standards apply directly to specific units based upon their fuel-type and configuration (i.e., coal- or oil-fired steam plants versus combined cycle natural gas plants). As such, each state's goal is an emissions performance standard that reflects the fuel mix employed by the EGUs in operation in those states. The final rule provides guidelines to states to help develop their plans for meeting the interim (2022-2029) and final (2030 and beyond) emission performance standards, with three distinct compliance periods within that timeframe. States were originally required to submit their plans to EPA by September 2016, with an optional two-year extension provided to states establishing a need for additional time; however, this timing will be impacted by the court-imposed stay described below.

Prior to the court-imposed stay described below, ADEQ, with input from a technical working group comprised of Arizona utilities and other stakeholders, was working to develop a compliance plan for submittal to EPA. Since the imposition of the stay, ADEQ is continuing to assess alternatives while completing outreach and soliciting feedback from stakeholders. In addition to these ongoing state proceedings, EPA has taken public comments on proposed model rules and a proposed federal compliance plan, which included consideration as to how the Clean Power Plan will apply to EGUs on tribal land such as the Navajo Nation.

The legality of the Clean Power Plan is being challenged in the U.S. Court of Appeals for the D.C. Circuit; the parties raising this challenge include, among others, the ACC. On February 9, 2016, the U.S.

Supreme Court granted a stay of the Clean Power Plan pending judicial review of the rule, which temporarily delays compliance obligations under the Clean Power Plan. We cannot predict the extent of the delay.

With respect to our Arizona generating units, we are currently evaluating the range of compliance options available to ADEQ, including whether Arizona deploys a rate- or mass-based compliance plan. Based on the fuel-mix and location of our Arizona EGUs, and the significant investments we have made in renewable generation and demand-side energy efficiency, if ADEQ selects a rate-based compliance plan, we believe that we will be able to comply with the Clean Power Plan for our Arizona generating units in a manner that will not have material financial or operational impacts to the Company. On the other hand, if ADEQ selects a mass-based approach to compliance with the Clean Power Plan, our annual cost of compliance could be material. These costs could include costs to acquire mass-based compliance allowances.

As to our facilities on the Navajo Nation, EPA has yet to determine whether or to what extent EGUs on the Navajo Nation will be required to comply with the Clean Power Plan. EPA has proposed to determine that it is necessary or appropriate to impose a federal plan on the Navajo Nation for compliance with the Clean Power Plan. In response, we filed comments with EPA advocating that such a federal plan is neither necessary nor appropriate to protect air quality on the Navajo Nation. If EPA reaches a determination that is consistent with our preferred approach for the Navajo Nation, we believe the Clean Power Plan will not have material financial or operational impacts on our operations within the Navajo Nation.

Alternatively, if EPA determines that a federal plan is necessary or appropriate for the Navajo Nation, and depending on our need for future operations at our EGUs located there, we may be unable to comply with the federal plan unless we acquire mass-based allowances or emission rate credits within established carbon trading markets, or curtail our operations. Subject to the uncertainties set forth below, and assuming that EPA establishes a federal plan for the Navajo Nation that requires carbon allowances or credits to be surrendered for plan compliance, it is possible we will be required to purchase some quantity of credits or allowances, the cost of which could be material.

Because ADEQ has not issued its plan for Arizona, and because we do not know whether EPA will decide to impose a plan or, if so, what that plan will require, there are a number of uncertainties associated with our potential cost exposure. These uncertainties include: whether judicial review will result in the Clean Power Plan being vacated in whole or in part or, if not, the extent of any resulting compliance deadline delays; whether any plan will be imposed for EGUs on the Navajo Nation; the future existence and liquidity of allowance or credit compliance trading markets; the applicability of existing contractual obligations with current and former owners of our participant-owned coal-fired EGUs; the type of federal or state compliance plan (either rate- or mass-based); whether or not the trading of allowances or credits will be authorized mechanisms for compliance with any final EPA or ADEQ plan; and how units that have been closed will be treated for allowance or credit allocation purposes.

In the event that the incurrence of compliance costs is not economically viable or prudent for our operations in Arizona or on the Navajo Nation, or if we do not have the option of acquiring allowances to account for the emissions from our operations, we may explore other options, including reduced levels of output or potential plant closures, as alternatives to purchasing allowances. Given these uncertainties, our analysis of the available compliance options remains ongoing, and additional information or considerations may arise that change our expectations.

Company Response to Climate Change Initiatives . We have undertaken a number of initiatives that address emission concerns, including renewable energy procurement and development, promotion of programs and rates that promote energy conservation, renewable energy use, and energy efficiency. (See "Energy Sources and Resource Planning - Current and Future Resources" above for details of these plans and

initiatives.) APS currently has a diverse portfolio of renewable resources, including solar, wind, geothermal, biogas, and biomass, and we expect the percentage of renewable energy in our resource portfolio to increase over the coming years.

APS prepares an inventory of GHG emissions from its operations. This inventory is reported to EPA under the EPA GHG Reporting Program and is voluntarily communicated to the public in Pinnacle West's annual Corporate Responsibility Report, which is available on our website (www.pinnaclewest.com). The report provides information related to the Company and its approach to sustainability and its workplace and environmental performance. The information on Pinnacle West's website, including the Corporate Responsibility Report, is not incorporated by reference into or otherwise a part of this report.

EPA Environmental Regulation

Regional Haze Rules. In 1999, EPA announced regional haze rules to reduce visibility impairment in national parks and wilderness areas. The rules require states (or, for sources located on tribal land, EPA) to determine what pollution control technologies constitute the BART for certain older major stationary sources, including fossil-fired power plants. EPA subsequently issued the Clean Air Visibility Rule, which provides guidelines on how to perform a BART analysis.

The Four Corners and Navajo Plant participants' obligations to comply with EPA's final BART determinations (and Cholla's obligations to comply with ADEQ's and EPA's determinations), coupled with the financial impact of potential future climate change legislation, other environmental regulations, and other business considerations, could jeopardize the economic viability of these plants or the ability of individual participants to continue their participation in these plants.

Cholla. APS believes that EPA's original 2012 final rule establishing controls constituting BART for Cholla, which would require installation of selective catalytic reduction ("SCR") controls with a cost to APS of approximately \$100 million is unsupported and that EPA had no basis for disapproving Arizona's State Implementation Plan ("SIP") and promulgating a Federal Implementation Plan ("FIP") that is inconsistent with the state's considered BART determinations under the regional haze program. Accordingly, on February 1, 2013, APS filed a Petition for Review of the final BART rule in the United States Court of Appeals for the Ninth Circuit. Briefing in the case was completed in February 2014.

In September 2014, APS met with EPA to propose a compromise BART strategy. Pending certain regulatory approvals, APS would permanently close Cholla Unit 2 and cease burning coal at Units 1 and 3 by the mid-2020s. (See Note 3 for details related to the resulting regulatory asset.) APS made the proposal with the understanding that additional emission control equipment is unlikely to be required in the future because retiring and/or converting the units as contemplated in the proposal is more cost effective than, and will result in increased visibility improvement over, the current BART requirements for NOx imposed on the Cholla units under EPA's BART FIP. APS's proposal involves state and federal rulemaking processes. In light of these ongoing administrative proceedings, on February 19, 2015, APS, PacifiCorp (owner of Cholla Unit 4), and EPA jointly moved the court to sever and hold in abeyance those claims in the litigation pertaining to Cholla pending regulatory actions by the state and EPA. The court granted the parties' unopposed motion on February 20, 2015.

On October 16, 2015, ADEQ issued a revised operating permit for Cholla, which incorporates APS's proposal, and subsequently submitted a proposed revision to the SIP to the EPA, which would incorporate the new permit terms. On June 30, 2016, EPA issued a proposed rule approving a revision to the Arizona SIP that incorporates APS's compromise approach for compliance with the Regional Haze program. EPA signed the final rule approving the Agency's proposal on January 13, 2017. Once the final rule is published in the Federal Register, parties have 60 days to file a petition for review in the Ninth Circuit Court of Appeals. APS cannot

predict at this time whether such petitions will be filed or if they will be successful. In addition, under the terms of an executive memorandum issued on January 20, 2017, this final rule will not be published in the Federal Register until after it has been reviewed by an appointee of the President. We cannot predict when such review will occur and what may result from the additional review.

Four Corners . Based on EPA's final standards, APS estimates that its 63% share of the cost of required controls for Four Corners Units 4 and 5 would be approximately \$400 million. In addition, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in Four Corners Units 4 and 5. 4CA purchased the El Paso interest on July 6, 2016. NTEC has the option to purchase the interest within a certain timeframe pursuant to an option granted to NTEC. In December 2015, NTEC provided notice of its intent to exercise the option. The cost of the pollution controls related to the 7% interest is approximately \$45 million, which will be assumed by the ultimate owner of the 7% interest.

Navajo Plant. On July 28, 2014, EPA issued a final Navajo Plant BART rule. APS estimates that its share of costs for upgrades at the Navajo Plant, based on EPA's FIP, could be up to approximately \$200 million. In October 2014, a coalition of environmental groups, an Indian tribe and others filed petitions for review in the United States Court of Appeals for the Ninth Circuit asking the Court to review EPA's final BART rule for the Navajo Plant. We cannot predict the outcome of this review process. See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Navajo Generating Station" above for information regarding future plans for the Navajo Plant.

Mercury and other Hazardous Air Pollutants. In 2011, EPA issued rules establishing maximum achievable control technology standards to regulate emissions of mercury and other hazardous air pollutants from fossil-fired plants. APS estimates that the cost for the remaining equipment necessary to meet these standards is approximately \$8 million for Cholla. No additional equipment is needed for Four Corners Units 4 and 5 to comply with these rules. SRP, the operating agent for the Navajo Plant, estimates that APS's share of costs for equipment necessary to comply with the rules is approximately \$1 million, the majority of which has already been incurred. Litigation concerning the rules, including supplemental analyses EPA has prepared in support of the MATS regulation, is ongoing. These proceedings do not materially impact APS. Regardless of the results from further judicial or administrative proceedings concerning the MATS rulemaking, the Arizona State Mercury Rule, the stringency of which is roughly equivalent to that of MATS, would still apply to Cholla.

Coal Combustion Waste. On December 19, 2014, EPA issued its final regulations governing the handling and disposal of CCR, such as fly ash and bottom ash. The rule regulates CCR as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act ("RCRA") and establishes national minimum criteria for existing and new CCR landfills and surface impoundments and all lateral expansions consisting of location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post closure care, and recordkeeping, notification, and Internet posting requirements. The rule generally requires any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving CCR and either retrofit or close, and further requires the closure of any CCR landfill or surface impoundment that cannot meet the applicable performance criteria for location restrictions or structural integrity. While EPA has chosen to regulate the disposal of CCR in landfills and surface impoundments as non-hazardous waste under the final rule, the agency makes clear that it will continue to evaluate any risks associated with CCR disposal and leaves open the possibility that it may regulate CCR as a hazardous waste under RCRA Subtitle C in the future.

On December 16, 2016, President Obama signed the Water Infrastructure Improvements for the Nation ("WIIN") Act into law, which contains a number of provisions requiring EPA to modify the self-implementing provisions of the Agency's current CCR rules under Subtitle D. Such modifications include new EPA authority to directly enforce the CCR rules through the use of administrative orders and providing states, like Arizona, where the Cholla facility is located, the option of developing CCR disposal unit permitting programs, subject to EPA approval. For facilities in states that do not develop state-specific permitting programs, EPA is required to develop a federal permit program, pending the availability of congressional appropriations. By contrast, for facilities located within the boundaries of Native American tribal reservations, such as the Navajo Nation, where the Navajo Plant and Four Corners facilities are located, EPA is required to develop a federal permit program regardless of appropriated funds. Because EPA has yet to undertake rulemaking proceedings to implement the CCR provisions of the WIIN Act, and Arizona has yet to determine whether it will develop a state-specific permitting program, it is unclear what effects the CCR provisions of the WIIN Act will have on APS's management of CCR.

APS currently disposes of CCR in ash ponds and dry storage areas at Cholla and Four Corners. APS estimates that its share of incremental costs to comply with the CCR rule for Four Corners is approximately \$15 million. APS is currently evaluating compliance alternatives for Cholla and estimates that its share of incremental costs to comply with the CCR rule for this plant is in the range of \$5 million to \$40 million based upon which compliance alternatives are ultimately selected. The Navajo Plant currently disposes of CCR in a dry landfill storage area. APS estimates that its share of incremental costs to comply with the CCR rule for the Navajo Plant is approximately \$1 million, the majority of which has already been incurred. Additionally, the CCR rule requires ongoing groundwater monitoring. Depending upon the results of such monitoring at each of Cholla, Four Corners and the Navajo Plant, we may be required to take corrective actions, the costs of which we are unable to reasonably estimate at this time.

Pursuant to a June 24, 2016 order by the D.C. Circuit Court of Appeals in the litigation by industry- and environmental-groups challenging EPA's CCR regulations, within the next three years EPA is required to complete a rulemaking proceeding concerning whether or not boron must be included on the list of groundwater constituents that might trigger corrective action under EPA's CCR rules. EPA is not required to take final action approving the inclusion of boron, but EPA must propose and consider its inclusion. Should EPA take final action adding boron to the list of groundwater constituents that might trigger corrective action, any resulting corrective action measures may increase APS's costs of compliance with the CCR rule at our coal-fired generating facilities. At this time, though, APS cannot predict when EPA will commence its rulemaking concerning boron or the eventual results of those proceedings.

Effluent Limitation Guidelines. On September 30, 2015, EPA finalized revised effluent limitation guidelines establishing technology-based wastewater discharge limitations for fossil-fired EGUs. EPA's final regulation targets metals and other pollutants in wastewater streams originating from fly ash and bottom ash handling activities, scrubber activities, and coal ash disposal leachate. Based upon an earlier set of preferred alternatives, the final effluent limitations generally require chemical precipitation and biological treatment for flue gas desulfurization scrubber wastewater, "zero discharge" from fly ash and bottom ash handling, and impoundment for coal ash disposal leachate. Compliance with these limitations will be required in connection with National Pollution Discharge Elimination System ("NPDES") discharge permit renewals, which occur in five-year intervals, that arise between 2018 and 2023. Until a draft NPDES permit for Four Corners is proposed during that timeframe, we are uncertain what will be required to control these discharges in compliance with the finalized effluent limitations at that facility. Cholla and the Navajo Plant do not require NPDES permitting.

Ozone National Ambient Air Quality Standards. On October 1, 2015, EPA finalized revisions to the primary ground-level ozone national ambient air quality standards ("NAAQS") at a level of 70 parts per billion

("ppb"). With ozone standards becoming more stringent, our fossil generation units will come under increasing pressure to reduce emissions of nitrogen oxides and volatile organic compounds, and to generate emission offsets for new projects or facility expansions located in ozone nonattainment areas. EPA is expected to designate attainment and nonattainment areas relative to the new 70 ppb standard by October 1, 2017. Depending on when EPA approves attainment designations for the Arizona and Navajo Nation jurisdictions in which our fossil generation units are located, revisions to SIPs and FIPs, respectively, implementing required controls to achieve the new 70 ppb standard are expected to be in place between 2020 and 2021. At this time, because proposed SIPs and FIPs implementing the revised ozone NAAQ8s have yet to be released, APS is unable to predict what impact the adoption of these standards may have on the Company. APS will continue to monitor these standards as they are implemented within the jurisdictions affecting APS.

Superfund-Related Matters. The Comprehensive Environmental Response Compensation and Liability Act ("Superfund") establishes liability for the cleanup of hazardous substances found contaminating the soil, water or air. Those who generated, transported or disposed of hazardous substances at a contaminated site are among those who are potentially responsible parties ("PRPs"). PRPs may be strictly, and often are jointly and severally, liable for clean-up. On September 3, 2003, EPA advised APS that EPA considers APS to be a PRP in the Motorola 52 nd Street Superfund Site, Operable Unit 3 ("OU3") in Phoenix, Arizona. APS has facilities that are within this Superfund site. APS and Pinnacle West have agreed with EPA to perform certain investigative activities of the APS facilities within OU3. In addition, on September 23, 2009, APS agreed with EPA and one other PRP to voluntarily assist with the funding and management of the site-wide groundwater remedial investigation and feasibility study work plan ("RI/FS"). The OU3 working group parties have agreed to a schedule with EPA that calls for the submission of a revised draft RI/FS by June 2017. We estimate that our costs related to this investigation and study will be approximately \$2 million. We anticipate incurring additional expenditures in the future, but because the overall investigation is not complete and ultimate remediation requirements are not yet finalized, at the present time expenditures related to this matter cannot be reasonably estimated.

On August 6, 2013, the Roosevelt Irrigation District ("RID") filed a lawsuit in Arizona District Court against APS and 24 other defendants, alleging that RID's groundwater wells were contaminated by the release of hazardous substances from facilities owned or operated by the defendants. The lawsuit also alleges that, under Superfund laws, the defendants are jointly and severally liable to RID. The allegations against APS arise out of APS's current and former ownership of facilities in and around OU3. As part of a state governmental investigation into groundwater contamination in this area, on January 25, 2015, ADEQ sent a letter to APS seeking information concerning the degree to which, if any, APS's current and former ownership of these facilities may have contributed to groundwater contamination in this area. APS responded to ADEQ on May 4, 2015. On December 16, 2016, two RID contractors filed ancillary lawsuits for recovery of costs against APS and the other defendants. We are unable to predict the outcome of these matters; however, we do not expect the outcome to have a material impact on our financial position, results of operations or eash flows.

Manufactured Gas Plant Sites. Certain properties which APS now owns or which were previously owned by it or its corporate predecessors were at one time sites of, or sites associated with, manufactured gas plants. APS is taking action to voluntarily remediate these sites. APS does not expect these matters to have a material adverse effect on its financial position, results of operations or cash flows.

Federal Agency Environmental Lawsuit Related to Four Corners

On April 20, 2016, several environmental groups filed a lawsuit against OSM and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the ESA and NEPA in providing the federal approvals necessary to extend operations at the Four Corners Power Plant and

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the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016. Briefing on the merits of this litigation is expected to extend through May 2017. On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. Because the court has placed a stay on all litigation deadlines pending its decision regarding NTEC's motion to dismiss, the schedule for briefing and the anticipated timeline for completion of this litigation will likely be extended. We cannot predict the outcome of this matter or its potential effect on Four Corners.

Navajo Nation Environmental Issues

Four Corners and the Navajo Plant are located on the Navajo Reservation and are held under easements granted by the federal government, as well as leases from the Navajo Nation. See "Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities" above for additional information regarding these plants.

In July 1995, the Navajo Nation enacted the Navajo Nation Air Pollution Prevention and Control Act, the Navajo Nation Safe Drinking Water Act, and the Navajo Nation Pesticide Act (collectively, the "Navajo Acts"). The Navajo Acts purport to give the Navajo Nation Environmental Protection Agency authority to promulgate regulations covering air quality, drinking water, and pesticide activities, including those activities that occur at Four Corners and the Navajo Plant. On October 17, 1995, the Four Corners participants and the Navajo Plant participants each filed a lawsuit in the District Court of the Navajo Nation, Window Rock District, challenging the applicability of the Navajo Acts as to Four Corners and the Navajo Plant. The Court has stayed these proceedings pursuant to a request by the parties, and the parties are seeking to negotiate a settlement.

In April 2000, the Navajo Nation Council approved operating permit regulations under the Navajo Nation Air Pollution Prevention and Control Act. APS believes the Navajo Nation exceeded its authority when it adopted the operating permit regulations. On July 12, 2000, the Four Corners participants and the Navajo Plant participants each filed a petition with the Navajo Supreme Court for review of these regulations. Those proceedings have been stayed, pending the settlement negotiations mentioned above. APS cannot currently predict the outcome of this matter.

On May 18, 2005, APS, SRP, as the operating agent for the Navajo Plant, and the Navajo Nation executed a Voluntary Compliance Agreement to resolve their disputes regarding the Navajo Nation Air Pollution Prevention and Control Act. As a result of this agreement, APS sought, and the courts granted, dismissal of the pending litigation in the Navajo Nation Supreme Court and the Navajo Nation District Court, to the extent the claims relate to the Clean Air Act. The agreement does not address or resolve any dispute relating to other Navajo Acts. APS cannot currently predict the outcome of this matter.

Water Supply

Assured supplies of water are important for APS's generating plants. At the present time, APS has adequate water to meet its needs. The Four Corners region, in which Four Corners is located, has historically experienced drought conditions that may affect the water supply for the plants if adequate moisture is not received in the watershed that supplies the area. However, during the past 12 months the region has received snowfall and precipitation sufficient to recover the Navajo Reservoir to an optimum operating level, reducing the probability of shortage in future years. Although the watershed and reservoirs are in a good condition at this time, APS is continuing to work with area stakeholders to implement agreements to minimize the effect, if any, on future drought conditions that could have an impact on operations of its plants.

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Conflicting claims to limited amounts of water in the southwestern United States have resulted in numerous court actions, which, in addition to future supply conditions, have the potential to impact APS's operations.

San Juan River Adjudication. Both groundwater and surface water in areas important to APS's operations have been the subject of inquiries, claims, and legal proceedings, which will require a number of years to resolve. APS is one of a number of parties in a proceeding, filed March 13, 1975, before the Eleventh Judicial District Court in New Mexico to adjudicate rights to a stream system from which water for Four Corners is derived. An agreement reached with the Navajo Nation in 1985, however, provides that if Four Corners loses a portion of its rights in the adjudication, the Navajo Nation will provide, for an agreed upon cost, sufficient water from its allocation to offset the loss. In addition, APS is a party to a water contract that allows the company to secure water for Four Corners in the event of a water shortage and is a party to a shortage sharing agreement, which provides for the apportionment of water supplies to Four Corners in the event of a water shortage in the San Juan River Basin.

Gila River Adjudication. A summons served on APS in early 1986 required all water claimants in the Lower Gila River Watershed in Arizona to assert any claims to water on or before January 20, 1987, in an action pending in Arizona Superior Court. Palo Verde is located within the geographic area subject to the summons. APS's rights and the rights of the other Palo Verde participants to the use of groundwater and effluent at Palo Verde are potentially at issue in this action. As operating agent of Palo Verde, APS filed claims that dispute the court's jurisdiction over the Palo Verde participants' groundwater rights and their contractual rights to effluent relating to Palo Verde. Alternatively, APS seeks confirmation of such rights. Several of APS's other power plants are also located within the geographic area subject to the summons. APS's claims dispute the court's jurisdiction over APS's groundwater rights with respect to these plants. Alternatively, APS seeks confirmation of such rights. In November 1999, the Arizona Supreme Court issued a decision confirming that certain groundwater rights may be available to the federal government and Indian tribes. In addition, in September 2000, the Arizona Supreme Court issued a decision affirming the lower court's criteria for resolving groundwater claims. Litigation on both of these issues has continued in the trial court. In December 2005, APS and other parties filed a petition with the Arizona Supreme Court requesting interlocutory review of a September 2005 trial court order regarding procedures for determining whether groundwater pumping is affecting surface water rights. The Arizona Supreme Court denied the petition in May 2007, and the trial court is now proceeding with implementation of its 2005 order. No trial date concerning APS's water rights claims has been set in this matter.

Little Colorado River Adjudication. APS has filed claims to water in the Little Colorado River Watershed in Arizona in an action pending in the Apache County, Arizona, Superior Court, which was originally filed on September 5, 1985. APS's groundwater resource utilized at Cholla is within the geographic area subject to the adjudication and, therefore, is potentially at issue in the case. APS's claims dispute the court's jurisdiction over its groundwater rights. Alternatively, APS seeks confirmation of such rights. Other claims have been identified as ready for litigation in motions filed with the court. No trial date concerning APS's water rights claims has been set in this matter.

Although the above matters remain subject to further evaluation, APS does not expect that the described litigation will have a material adverse impact on its financial position, results of operations, or cash flows.

BUSINESS OF OTHER SUBSIDIARIES

Bright Canyon Energy

On July 31, 2014, Pinnacle West announced its creation of a wholly-owned subsidiary, BCE. BCE will focus on new growth opportunities that leverage the Company's core expertise in the electric energy industry. BCE's first initiative is a 50/50 joint venture with BHE U.S. Transmission LLC, a subsidiary of Berkshire Hathaway Energy Company. The joint venture, named TransCanyon, is pursuing independent transmission opportunities within the eleven states that comprise the Western Electricity Coordinating Council, excluding opportunities related to transmission service that would otherwise be provided under the tariffs of the retail service territories of the venture partners' utility affiliates. TransCanyon continues to pursue transmission development opportunities in the western United States consistent with its strategy.

On March 29, 2016, TransCanyon entered into a strategic alliance agreement with Pacific Gas and Electric Company ("PG&E") to jointly pursue competitive transmission opportunities solicited by the CAISO, the operator for the majority of California's transmission grid. TransCanyon and PG&E intend to jointly engage in the development of future transmission infrastructure and compete to develop, build, own and operate transmission projects approved by the CAISO.

El Dorado

El Dorado owns minority interests in several energy-related investments and Arizona community-based ventures. El Dorado's short-term goal is to prudently realize the value of its existing investments. As of December 31, 2016, El Dorado had total assets of approximately \$11 million. El Dorado is not expected to contribute in any material way to our future financial performance, nor will it require any material amounts of capital over the next three years.

4CA

See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generating Facilities - Coal-Fueled Generating Facilities - Four Corners" above for information regarding 4CA. As of December 31, 2016, 4CA had total assets of approximately \$69 million.

OTHER INFORMATION

Subpoenas

Pinnacle West has received grand jury subpoents issued in connection with an investigation by the office of the United States

Attorney for the District of Arizona. The subpoents seek information principally pertaining to the 2014 statewide election races in Arizona
for Secretary of State and for positions on the ACC. The subpoents request records involving certain Pinnacle West officers and employees,
including the Company's Chief Executive Officer, as well as communications between Pinnacle West personnel and a former ACC

Commissioner, Pinnacle West is cooperating fully with the United States Attorney's office in this matter.

Other Information

Pinnacle West, APS and El Dorado are all incorporated in the State of Arizona. BCE and 4CA are incorporated in Delaware. Additional information for each of these companies is provided below:

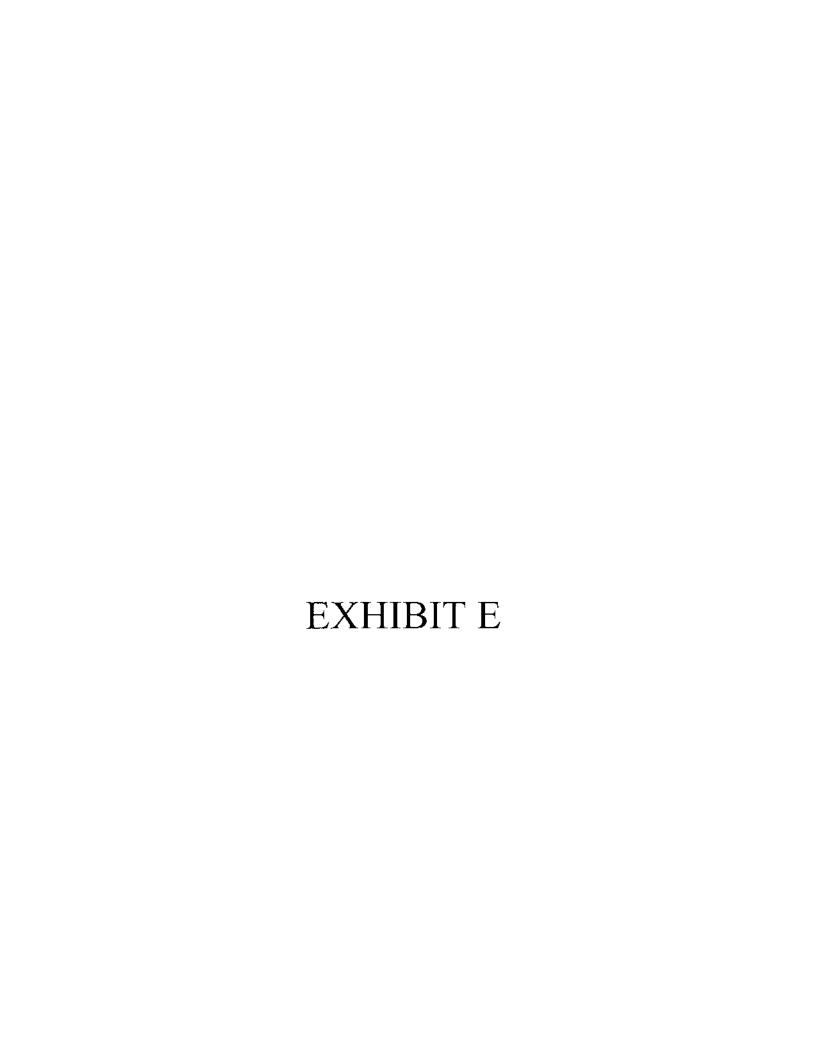
	Principal Executive Office Address	Year of Incorporation	Approximate Number of Employees at December 31, 2016
Pinnacle West	400 North Fifth Street Phoenix, AZ 85004	1985	89
APS	400 North Fifth Street P.O. Box 53999 Phoenix, AZ 85072-3999	1920	6,244
BCE	400 East Van Buren Phoenix, AZ 85004	2014	6
El Dorado	400 East Van Buren Phoenix, AZ 85004	1983	-
4CA	400 North Fifth Street Phoenix, AZ 85004	2016	:
Total			6,339

The APS number includes employees at jointly-owned generating facilities (approximately 2,628 employees) for which APS serves as the generating facility manager. Approximately 1,613 APS employees are union employees, represented by the International Brotherhood of Electrical Workers ("IBEW") or the United Security Professionals of America ("USPA"). APS concluded negotiations with IBEW representatives over the new collective bargaining agreement in April 2015, and the new agreement is in place until March 31, 2018. The contract provides an average wage increase of 2.0% for the first year, 2.25% for the second year and 3,0% for the third year. The Company concluded negotiations with the USPA over the terms of a new collective bargaining agreement in May of 2014, and the new agreement is in place until May 31, 2017.

WHERE TO FIND MORE INFORMATION

We use our website (www.pimaclewest.com) as a channel of distribution for material Company information. The following filings are available free of charge on our website as soon as reasonably practicable after they are electronically filed with, or furnished to, the Securities and Exchange Commission ("SEC"): Annual Reports on Form 10-K, definitive proxy statements for our annual shareholder meetings, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports. Our board and committee charters, Code of Ethics for Financial Executives, Code of Ethics and Business Practices and other corporate governance information is also available on the Pinnacle West website. Pinnacle West will post any amendments to the Code of Ethics for Financial Executives and Code of Ethics and Business Practices, and any waivers that are required to be disclosed by the rules of either the SEC or the New York Stock Exchange, on its website. The information on Pinnacle West's website is not incorporated by reference into this report.

You can request a copy of these documents, excluding exhibits, by contacting Pinnacle West at the following address: Pinnacle West Capital Corporation, Office of the Corporate Secretary, Mail Station 8602, P.O. Box 53999, Phoenix, Arizona 85072-3999 (telephone 602-250-4400).



MICHAEL K. JEANES, CLERK

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> # 319 P# 25797541

BASKIN RICHARDS PLC

2901 N. Central Avenue, Suite 1150

Phoenix, Arizona 85012

Telephone No. 602-812-7979

Facsimile No. 602-595-7800

E-mail: <u>brichards@baskinrichards.com</u>

alan@baskinrichards.com

Name and Arizona State Bar No.:

William A. Richards #013381

Alan Baskin #013155

Attorneys for Plaintiff

Commissioner Robert Burns

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

COMMISSIONER ROBERT BURNS, a member of the Arizona Corporation Commission, in his official capacity,

Plaintiff,

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ARIZONA PUBLIC SERVICE COMPANY, an Arizona public service corporation, and PINNACLE WEST CAPITAL CORPORATION, an Arizona corporation, and DONALD BRANDT, an individual,

n . . .

Defendants.

Case No. 01/2017

CV 2017-001831

COMPLAINT (Declaratory Judgment)

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

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The Parties

- The Arizona Corporation Commission is a governmental body of the State of Arizona, created and empowered through the Constitution and the laws of the State of Arizona.
- The Arizona Constitution, at Article XV, Section 1(B) creates the Corporation Commission, to be composed of five persons who shall be elected at the general election of the voters of Arizona.
- Plaintiff Commissioner Robert Burns is a duly elected Commissioner of the Arizona Corporation Commission.
- 4. By virtue of the office to which the voters of Arizona have elected him, Commissioner Burns is vested with all those authorities and delegated powers enumerated in and implied by the provisions of the Arizona Constitution and the laws and judicial precedent of the State of Arizona for his elected position.
- 5. By virtue of his office as a Commissioner, Commissioner Burns is authorized to seek judicial relief when a member of the public attempts to interfere with or to refuse to comply with the duly authorized exercise of the authorities and responsibilities of his office.
- 6. Where such attempts involve the intentional refusal of a monopoly corporation subject to regulation by the Arizona Corporation Commission, its affiliate corporation, or its officers to comply with a lawful subpoena or other investigatory directive of his office, Commissioner Burns is authorized to seek, pursuant to the Arizona Uniform Declaratory Judgments Act, A.R.S. § 12-1831, et seq. and the constitutional and other laws of the State of Arizona, a judicial declaration confirming his authority to order compliance with such subpoenas or other investigatory directives.
- 7. Defendant Arizona Public Service Company ("APS") is an Arizona public service corporation that provides either retail or wholesale electric service to a large portion of the State of Arizona. APS has conducted business in the State of Arizona, and in Maricopa County in particular, at all times relevant to the allegations of this Complaint.

- 8. APS has taken actions in Maricopa County, Arizona from which the allegations of this Complaint arise.
- Defendant APS is also a regulated monopoly organization subject to regulation by the Arizona Corporation Commission.
- 10. As a result of the business advantages provided to APS through its status as a monopoly electric service provider, APS has become one of Arizona's largest commercial enterprises.
- 11. Defendant Pinnacle West Capital Corporation ("Pinnacle West") is a publicly traded corporation incorporated in Arizona. Pinnacle West has done business at all times relevant to the allegations in this Complaint in the State of Arizona, and in Maricopa County in particular.
- Pinnacle West has taken actions in Maricopa County, Arizona from which the allegations of this Complaint arise.
- 13. In the U.S. Securities and Exchange Commission Form 10-K filed jointly for Pinnacle West and APS for the fiscal year ended December 31, 2016, Pinnacle stated:

Pinnacle West is a holding company that conducts business through its subsidiaries. We derive essentially all of our revenues and earnings from our wholly-owned subsidiary, APS. APS is a vertically-integrated electric utility that provides either retail or 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.

- 14. Pinnacle West reported operating revenues on its consolidated financial statements for 2016 of over \$3.49 billion, with net income attributable to common shareholders of over \$442 million. It further reported electric operating revenues for APS in 2016 of over \$3.48 billion, and net income to APS for 2016 of over \$462 million.
- 15. Pinnacle West further reported on its 2016 consolidated financial statements having over \$16 billion in total assets, with over \$15.9 billion in assets held by APS.
- 16. Defendant Don Brandt ("Brandt") is the Chairman of the Board, President and Chief Executive Officer of Pinnacle West, and he is also the President and Chairman of the

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

- 17. Defendant Brandt has taken actions in Maricopa County, Arizona from which the allegations of this Complaint arise.
- APS have adopted incentive plans that provide for Mr. Brandt and other executives of Pinnacle West or APS to achieve substantial annual incentive compensation tied to corporate earnings and/or to target performance levels for various business units of APS. On information and belief, such plans provide personal incentives to Pinnacle West and APS executives to increase earnings of the APS regulated monopoly.
- 19. Judging by the placement of its logos and name on such items as buildings, announcements, programs, trash cans, signs and other locations, APS is one of the largest supporters of public events in Arizona. On information and belief, Pinnacle West contends that the monies used to create such an impression are from Pinnacle West and not from APS. Even if that is true, the clear intent of the donations is to create the public impression that APS has provided substantial backing to charitable or civic events.
- 20. On information and belief, the contributions made to create public credit through perceptions of financial support by APS can or have been used by Defendants APS and Pinnacle West as a tool to engender and leverage political support and lobbying-type efforts in support of APS's and Pinnacle West's financial or political objections and interests.
- 21. According to the statement of Defendant Don Brandt given to Pinnacle West shareholders on May 20, 2015, APS made in the prior year "\$10 million in APS charitable contributions".
- 22. On information and belief, Pinnacle West and APS also make much of their financial contributions to charitable organizations or other groups or events through Pinnacle West. Also on information and belief, APS does not report contributions made by Pinnacle West for support of charitable organizations or public events to the Arizona Corporation Commission, even where such contributions result in sponsorship credit or marketing benefits

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

- 23. On information and belief, APS and Pinnacle West spend large sums of money on a regular basis engaging the services of marketing personnel, lobbying personnel, and/or political strategists for the benefit of APS.
- 24. On information and belief, much of the sums paid to support the lobbying, marketing and political activities directly and indirectly benefitting APS are ostensibly paid through Pinnacle West, and the payment of such sums are not therefore reported to the Arizona Corporation Commission by APS.
- 25. On information and belief, nothing in the law prevents APS or Pinnacle West from publicly disclosing, or from reporting to the Arizona Corporation Commission, who is being paid for all lobbying, marketing and political activities benefitting APS, how much they are being paid, and the precise nature of all activity conducted through such arrangements for the benefit of APS.
- 26. In 2014, some person(s) or some entity(ies) made unprecedented financial contributions in support of the election of two Commission candidates through advertising paid for by two 504(c)(4) independent expenditure groups ("IEGs"). On information and belief, the independent expenditure groups were Save Our State Now and the Arizona Free Enterprise Club. It has been reported that the two IEGs spent some \$3.2 million on advertising related to the 2014 Corporation Commission election.
- 27. Reason exists to believe that the unprecedented level of spending in support of Commission races was materially facilitated by contributions from, or facilitated by, Pinnacle West. For instance, in his address before the Thirtieth Annual Meeting of Shareholders of Pinnacle West on May 20, 2015, which address Pinnacle West put in writing, Defendant Brandt made the following statements:

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

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

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

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

- 28. On information and belief, Pinnacle West and APS have not publicly and clearly admitted that their executives or monies had anything to do with the 2014 independent expenditure group spending on Commission races. Rather, the Defendants contend that they have no obligation to answer to the Corporation Commission whether they were involved with those expenditures.
- 29. However, members of the press and constituents of Commissioner Burns have raised substantial concerns that Pinnacle West and/or APS were meddling in the 2014 campaign in support of candidates they preferred. On information and belief, substantial concerns have been raised in press reports that such contributions would create undue influence over the Commissioners elected with the independent expenditure groups' backing.
- 30. Even the appearance that Pinnacle West or APS executives have thrown material financial support behind a candidate for a Commission seat can be disruptive, can bring disrepute on the Commission, makes the public question the integrity of the Commission and the Commissioners, makes Arizona consumers, including those impacted by APS's service rates, question whether the rate-setting and other regulatory determinations of the Corporation Commission are made with appropriate objectivity and independence and focus on the consumer, and can undermine the operations of the Commission seeking to protect the interest of consumers.
- 31. On information and belief, Pinnacle West and/or APS executives intend to continue making political contributions, charitable contributions, and other payments or

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

- 32. In fact, Pinnacle West has published a current public pronouncement of its political participation policies. As of January, 2017, Pinnacle West has published at http://www.Pinnaclewest.com/about-us/corporate-governance/Political-Participation-
- <u>Policy/default.aspx</u> a Political Participation Policy. On information and belief, the Political Participation Policy is intended to cover political contributions and support by or for the benefit of APS as well as Pinnacle West.
- 33. The APS and Pinnacle West Policy expressly acknowledges: 1) "Because Pinnacle West and APS participate in a wide range of business activities to fulfill this responsibility [to "provide customers in our service territory with safe, reliable and affordable electricity"], policy decisions at the federal, state and local levels can have profound impacts on virtually all aspects of our business"; and 2)"[w]e have a responsibility to our customers, communities and shareholders to participate in the political process, when appropriate, so that our perspectives are heard and so that we can develop productive working relationships with governmental decision-makers."
- 34. The Policy further states that Pinnacle West is committed to "corporate citizenship" activities which include "sponsoring a political action committee and, where permitted by law, considering the contribution of corporate funds to political candidates, political parties, political action committees, and organizations that engage in political activities", and that such activities "may also include independent expenditures, or the sponsoring of a political action committee that engages in independent expenditures, in relation to the elections of candidates to office, get-out-the-vote efforts, and ballot initiatives and referenda."
 - 35. The Political Participation Policy further states:

In addition, we actively promote the economic health of the jurisdictions we serve 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

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

- 36. The Political Participation Policy further establishes a Pinnacle West Political Action Committee, describes its operations, and further expresses that all "[c]orporate contribution decisions are made primarily by our Vice President, Federal Affairs, and Vice President, State and Local Affairs, who "typically receive input from other members of our senior management team, including our Chief Executive Officer [Defendant Brandt]."
- 37. Thus, APS and Pinnacle West have admitted that decisions made by ACC Commissioners, as key governmental decision-makers, can have "profound impacts" on APS's business operations. They have further admitted that they intend to create relationships of influence through participation in the political process. Some actions could include potentially making financial contributions in support of or benefitting candidates for Commission seats. On information and belief, all such activities are intended to promote the business interests of APS and Pinnacle West, including further enhancing the income of executives of the two companies, and increasing net revenues and income.
- 38. APS and Pinnacle West have also admitted that Pinnacle West intends to keep making contributions in support of "charitable and non-profit organizations" who may be subject to lobbyist registration and who can promote "social welfare missions" to Commissioners or other elected leaders.
- 39. APS and Pinnacle West have also through the Political Action Policy admitted that Defendant Brandt and other senior executives of the companies play a direct role in helping determine how Pinnacle West funds are distributed to politically-related activities that could be used to influence a Commissioner, Commission candidate or Commission staff.
- 40. Without open and detailed disclosure concerning the contributions and payments made by or for the benefit or financial well-being of APS, including all those contributions ostensibly made through Pinnacle West, and without a detailed exposure of the process by which such contributions and payments are made, or by which Pinnacle West and APS may threaten to end such support, it is impossible for the elected Commissioners and their staff to

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

- 41. For instance, given the pressures on APS and Pinnacle West executives to increase both their own personal income, as well as income per share and other economic performance aspects of APS and Pinnacle West, it is possible that the reduction of millions of dollars in ostensible charitable contributions, marketing costs, lobbying costs, campaign support or other political activity costs, even on the Pinnacle West budget, would encourage or allow APS and Pinnacle West executives to develop greater efficiencies in delivery of service and reduce costs to customers without sacrificing their desired financial performance. Without full and detailed disclosure regarding the types of financial contributions and payments referenced above, the Commissioners and their staff cannot identify and work to implement such potentially critical cost saving regulations benefitting Arizona consumers.
- 42. Moreover, without full, timely and detailed disclosures by APS and Pinnacle West of the types of contributions and payments referenced above, the Corporation Commission and its individual Commissioners are robbed of their ability to inform Arizona consumers and stakeholders who can in turn use such information to advocate for themselves with Commissioners, Commission staff or even APS or Pinnacle West officials in an effort to reduce overall costs to consumers. Thus, the refusal of APS and Pinnacle West to provide such full, timely and detailed disclosures are negatively impacting Commissioner Burns' ability to inform constituents in the manner to which they are entitled and to provide them the type of information Arizona's constitutional framers expected could be made available to them to protect them against undue corporate utility influence in the rate setting and utility delivery

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

- 43. Given Pinnacle West's and APS's admissions that most all of Pinnacle West's business revenue and income comes from fees collected by APS from its Arizona customers, the amounts being used by Pinnacle West and/or APS to make political, charitable, lobbying, marketing or other similar contributions or payments as outline above are initially generated as fees from APS customers. These facts create a material risk that APS and Pinnacle West have or will enlist the assistance or compliance by the Corporation Commission in compelled political speech in violation of the federal and state constitutions.
- 44. If, for example, APS insists on particular expense calculations or income targets as part of its rate applications knowing or desiring particular levels of revenues or income for use in political, lobbying, campaign, charitable or marketing type activities as described above, then the rates being charged to APS customers may be set, in part, based on the need to and plan to fund particular political speech selected and targeted by the executives of APS and Pinnacle West. These circumstances create a real and palpable risk that the Commissioners will, knowingly or unknowingly, impose costs on customers that are intended to support the political speech activities of APS and Pinnacle West, including speech that the customers may not agree with. Such compelled speech could result in violations of the constitutional rights of Arizona consumers whose rights the Commissioners are elected and sworn to protect.
- 45. The Commissioners are unable to assess the risks of such compelled political speech without full, timely and detailed disclosures of what contributions and payments APS or Pinnacle West make, how such contributions are planned, determined and made, and how those contributions and payments impact the amounts sought by APS in ratemaking or rate adjustment proceedings before the Corporation Commission.
- 46. Without such full, timely and detailed disclosures the Commissioner are also unable to assess, evaluate, and structure rate making procedures, standards or rules that are needed to eliminate the risk of compelled political speech for Arizona's utility consumers.

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

Commissioner Burns' Authorities as a Commissioner of the Arizona Corporation Commission

- 48. The Arizona Corporation Commission is Arizona's unique fourth branch of state government, whose elected members are delegated and imbued with a unique combination of Arizona's sovereign executive, legislative and judicial powers. See, e.g. Ariz.Const., art. XV, §§ 3-5, 13-14, 17, 19; State v. Tucson Gas, Elec. Light & Power Co., 15 Ariz. 294, 305, 138 P. 781, 785 (1914) ("The functions of the Corporation Commission are not confined to any of the three departments named [legislative, executive and judicial branches], but its duties and powers pervade them all"); see Ariz. Corp. Comm'n v. Ariz. ex rel. Woods, 171 Ariz. 286, 290-291, 830 P.2d 807, 811-812 (1992) ("Woods"); Arizona Corporation Commission v. Superior Court, 105 Ariz. 56, 459 P.2d 489 (1969); Selective Life Insurance Co. v. Equitable Life Assurance Society, 101 Ariz. 594, 422 P.2d 710 (1967).
- 49. The powers vested by Arizona's framers in the Arizona Corporation Commission are, at least in part, "supreme" and may not be invaded by the other branches of government. *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 306 ("While [the Commission] is not so named, it is, in fact, another department of government, with powers and duties as well defined as any branch of the government, and where it is given exclusive power it is supreme. Its exclusive field may not be invaded by either the courts, the legislative or executive.")
- 50. The Arizona Corporation Commission is one of only a relatively few such state entities created by constitutional command, and only one of a minority of such state entities with elected commissioners. This unique history and make-up presents the opportunity for the

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

- 51. According to the legislative history of the Arizona Constitutional Convention, the Arizona Corporation Commission was created to overcome the paralyzing influence large corporations had already proven adept at wielding in traditional legislative and judicial arrangements.
- 52. To overcome recognized issues with corporate influence and insulation, the Arizona framers created an entirely separate branch of state government "vested with broad powers to regulate the activities of 'public service corporations,' defined to include private utilities and common carriers." Leshy, *Making of the Arizona Constitution, supra*, at 88; Ariz.Const., art. XV. The position occupied by Commissioner Burns is therefore part of the Arizona constitutional regulatory check on the powers of corporations, particularly regulated monopoly utilities.
- 53. The Arizona framers also intended that the Commissioners provide a uniquely protective form of governmental machinery assigned powers "primarily for the interest of the consumer." *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 308, 138 P. at 786.
- 54. According to the Supreme Court of the State of Arizona: "The founders expected the Commission to provide both effective regulation of public service corporations and consumer protection against overreaching by those corporations. *Constitutional Convention, supra*, at 612-15, 967-81; Engelby, *supra*, 20 Ariz.St.L.J. at 242-43. The progressive and labor forces, two strong ideological influences at the constitutional convention, combined to promote strong commission authority to regulate corporations, although the strongest power ultimately was limited to regulation of public service corporations [like APS]." *Woods*, 171 Ariz. at 290-291, 830 P.2d at 811-812 (citing Leshy, *Making of the Arizona Constitution, supra*, at 88; *APS II*, 157 Ariz. at 535, 760 P.2d at 535 (citing and quoting Gordon Morris Bakken, *The Arizona Constitutional Convention of 1910*, 1978 Ariz.St.L.J. 1, 15 (1978))).

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

- 56. Arizona voters have protected the independence of the Commission -- especially its provisions regarding election of commissioners -- from constitutional amendment on numerous occasions. See Woods, 171 Ariz. at 290-291, 830 P.2d at 811-812 (citing John D. Leshy, The Arizona State Constitution: A Reference Guide (prepublication manuscript 1991), at 629)).
- 57. The relationship between the Arizona Corporation Commission and APS includes APS's status as a regulated monopoly under which it has contracted to make adequate investment and render competent and adequate service in the public interest, and to subject itself to the regulatory powers and directives of the Arizona Corporation Commission, in return for a privilege of monopoly against other private utilities.
 - 58. The Arizona Constitution at Article XV, § 3 provides, in pertinent part:

The corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state, and may prescribe the 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;

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

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

- 61. The Arizona framers also clothed the Commissioners with full power to investigate, hear and determine disputes and controversies between public utility companies and the general public, and established constitutional expectations that the Commissioners would behave as trained, capable and conscientious commissioners, act reasonably in light of the facts and issues presented to them, and be unbiased, objective and accountable to the voters who elect them and the consumers they primarily serve, with no member subject to corporate influences that might alter them from a pure focus on ascertaining the truth and facts of a matter within their jurisdiction. See, e.g., Tucson Gas, Elec. Light & Power Co., 15 Ariz. at 305-306, 138 P. 785-786.
- 62. To carry out their constitutionally delegated powers, the Arizona Constitution expressly vests each Commissioner with powers to inspect and investigate properties, books, papers, businesses, methods, and affairs of any public service corporation. The Arizona Constitution states, at Article XV, § 4:

The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several 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.

(Emphasis added).

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

- 64. Under Arizona law, the investigatory powers of administrative agencies and their officers are analogous in their breadth to those of the grand jury. See Shelby Sch. v. Ariz. State Bd. of Educ., 192 Ariz. 156, 169, ¶ 62 (App. 1998).
- 65. The Arizona courts give Corporation Commission investigations 'wide berth'." Carrington v. Ariz. Corp. Comm., 199 Ariz. 303, 305, ¶ 8 (App. 2000) (quoting Polaris Int'l Metals Corp. v. Arizona Corp. Comm'n, 133 Ariz. 500, 506 (1982)). They further hold that the Commission must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the Commission's regulatory authority. Id.

The Commissioner's Interest in Developing Transparency and Disclosure Rules

- 66. Commentators and government scholars have recognized that direct election of corporation commission officers also creates the dangerous potential for regulatory "capture" or undue influence whereby regulated monopoly utilities or other stakeholders with business impacted by the commission may spend monies to create direct or indirect benefits for candidates for such offices or sitting commissioners. This danger extends to regulated monopoly utilities or other interested parties spending their monies to create influence with or over commission candidates or elected officials by supporting positions, causes, events or operations with which a commissioner or their family or close associates are affiliated.
- 67. When regulated monopoly utilities or other stakeholders having business before the Commission or interests in Arizona Corporation Commission proceedings can spend monies without public disclosure or scrutiny to create the types of influence or capture of candidates, Commissioners, or key agency staff discussed in the preceding paragraph, then the public impacted by Commission decisions can be misled into falsely believing that Commission decisions are being made with the objectivity and independence expected of the Commissioners by the public they serve.
- 68. Moreover, the Arizona citizens' constitutional objectives for objectivity and independence among Commissioners and their staff can be compromised, and the traditional

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

- 69. Arizona's constitutional history encourages new answers to problems, and the very structure and purpose of the Arizona Corporation Commission represented a bold, innovative solution to issues of corruption, legislative and judicial intransigence, and consumer exclusion that had plagued traditional governmental forms. Yet, the financial resources of today's regulated monopolies and other interested corporate players can exploit vast, new loopholes that undermine the objectivity, independence, transparency and consumer focus constitutionally expected of Arizona Corporation Commission Commissioners and the Commission's staff.
- 70. The spirit of innovation and improvement that motivated the creation of Arizona's fourth branch of government justifies the Commissioners maintaining constant vigilance against threats of the exercise of undisclosed influence by regulated monopoly utilities or others interested in the outcome of Commission business, and further justifies their careful and educated consideration of all available alternatives to guard the objectivity and independence that Arizona's constitutional framers expected, and that its current citizens deserve.
- 71. Longstanding legal standards and the political and economic policy sentiments embedded in Arizona's Constitution support robust transparency and disclosure ("T&D") measures to ensure properly informed decision-making by regulators, consumers, intervenors, competitors, stakeholders, and even regulated corporate executives, boards, shareholders and investors.
- 72. Given its unique position as a fourth branch of state government with designated executive, legislative and judicial powers, there are certain responsibilities and authorities and

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

- 73. As noted above, transparency, objectivity, and accountability to Arizona's utility consumers and an absence of influence by corporations affected by their decisions are hallmark expectations for the Arizona Corporation Commission's Commissioners under the Arizona Constitution and law. Such transparency and objectivity is especially appropriate, necessary and demanded in the case of regulated monopolies like APS and their affiliate corporations like Pinnacle West because customers of the regulated monopoly do not have any choice in selecting their general electric service provider. Determining and implementing the proper policies, practices, rules, standards and procedures to ensure the Commission and its Commissioners meet these constitutional standards is an exclusive constitutional responsibility and authority of the Commissioners.
- 74. Thus, one of the areas in which Commissioner Burns' elected office is granted authorities under the Constitution and laws of the State of Arizona, including Ariz.Const., art. XV, is the investigation of operations and financial dealings and arrangement of regulated monopoly utilities and their affiliated companies and organizations that may create opportunities for direct or indirect financial or political influence over Commissioners, candidates for Commissioner seats, Arizona Corporation Commission staff, or the family or close associates of any such persons.
- 75. Another related area of authority delegated to Commissioner Burns under the Constitution and laws of the State of Arizona, including Ariz.Const., art. XV, is the study, determination, structuring and proposal of policies, practices, rules and procedures regarding transparency and disclosure of financial contributions, expenditures, or benefits to be followed

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

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

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

- 77. In addition to his individual authority as a Commissioner to conduct investigations and inspections concerning the business and affairs of any public service corporation and its affiliates for purposes of identifying T&D issues and developing T&D rules, Commissioner Burns has delegated powers pursuant to the Constitution and laws of the State of Arizona, including without limitation Ariz.Const., art. XV and A.R.S. § 40-241, to require reporting and conduct inspections of records of any public service corporation, including APS, and its affiliates, including Pinnacle West, in connection with ratemaking issues and proceedings.
- 78. For instance, Commissioner Burns has specifically delegated powers pursuant to the Constitution and laws of the State of Arizona, including Ariz.Const., art. XV, § 3 to initiate and participate in proceedings, including investigations and studies, addressing ratemaking for Arizona's monopoly utilities, including APS.
- 79. The Supreme Court of the State of Arizona has already held that: "the Commission's regulatory power permits it to require information regarding, and approval of, all transactions between a public service corporation and its affiliates that may significantly affect economic stability and thus impact the rates charged by a public service corporation."

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

- 80. There exist substantial reasons to believe that the contribution or payments by Pinnacle West or APS of funds to support election campaigns or to fund or support charitable organizations, groups, or activities or events with which a Commissioner, a Commission candidate, or a key Commission staff member, or their family or close associates, may be involved or interested creates material risks of economic instability.
- 81. By way of example, Pinnacle West has reported in its 2016 SEC Form 10-K, the following:

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

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

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

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

- 83. Threats or risks of disruption of executive management, diversion of material economic resources, and criminal or civil investigation and/or prosecution of APS, Pinnacle West or their executives or agents threaten to undermine the compliance by APS with best practices and regulatory requirements for public health and safety, and for the health and safety of APS's own employees and contractors.
- 84. Threats or risks of disruption of executive management, diversion of material economic resources, and criminal or civil investigation and/or prosecution of APS, Pinnacle West or their executives or agents further threaten to increase economic pressures and requirements for APS and Pinnacle West and thereby motivate requests and activities designed to increase APS service rates and thereby increase costs of service to Arizona consumers.
- 85. As noted in allegations set forth above, there exist substantial reasons to believe the contributions or payments by Pinnacle West or APS of funds to support lobbying or marketing campaigns designed to target, leverage or influence Commissioners, Commission candidates or key Commission staff increase the overall expenses of operations for APS and Pinnacle West, threaten to negatively impact executive compensation and publicly reported economic performance of APS and Pinnacle West, eliminate incentives and financial abilities to decrease or curb rate-driving dynamics, and create risks that APS will push for expense calculations or other income figures during rate setting proceedings that inflict unnecessary costs on their customers.
- 86. As noted in allegations set forth above, there also exist substantial reasons for concern that contributions or payments by Pinnacle West or APS of funds to support lobbying or marketing campaigns, political campaigns or activities designed to target, leverage or influence Commissioners, Commission candidates, key Commission staff or other governmental officials create material risks that the Commission will, through the rate-setting

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

- 87. Consequently, issues related to the use of funds by APS and/or Pinnacle West to create influence over, or to leverage the lobbying of, Commissioners, Commission candidates, or key Commission staff are fundamentally tied to multiple matters within the exclusive authority and legitimate constitutional and statutory concerns of the Commission and its Commissioners.
- 88. Commissioner Burns is delegated powers pursuant to the Constitution and laws of the State of Arizona, including Ariz.Const., art. XV and A.R.S. § 40-241, to order and to inspect the accounts, books, papers and documents of a public service corporation or its affiliates, which in this case include APS and Pinnacle West, in connection with ratemaking proceedings. Commissioner Burns is also delegated powers pursuant to the Constitution and laws of the State of Arizona, including Ariz.Const., art. XV and A.R.S. § 40-241, to order the appearance and take the testimony of officers of public service corporations, including APS, in relation to the public service corporation's business and affairs.
- 89. Given the allegations set forth above, the inspections, testimony and investigations Commissioner Burns is authorized to initiate and compel necessarily include obtaining records, evidence and testimony related to the types of contributions and payments by APS and Pinnacle West discussed above.
- 90. Commissioner Burns' rights and authorities as set forth in this Complaint are individual rights and authorities and do not require the cooperation, acquiescence, compliance or authorization of any other Commissioners or the Commission as a whole. The other Commissioners have no legal authority to stop or limit the investigation, inspection of records and taking of testimony initiated by Commissioner Burns on such topics.

Commissioner Burns' Subpoenas to the APS Parties

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

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

- 92. The subpoenas sought production of documents, answers to written questions, and to compel testimony by Defendant Brandt and others with relevant knowledge concerning the subjects listed within the subpoenas.
- 93. Commissioner Burns originally filed the subpoenas in an administrative ratemaking docket for APS at the Corporation Commission.
- 94. The subpoenas issued by Commissioner Burns to APS and Pinnacle West and Mr. Brandt were and remain appropriate and lawful and authorized as part of the ratemaking process pending before the Commission involving APS. Commissioner Burns was not required to obtain or maintain authorization for such subpoenas from any other Commissioner or the Commission as a whole.
- 95. APS and Pinnacle West have no legal rights to object to or to refuse to comply with the subpoenas that are the subject of this action.
- 96. Yet, APS only partly complied with the subpoenas, and the Defendants have refused to comply with the remainder of the subpoenas. They have also refused and will continue to refuse to make Defendant Brandt or any other witness available to testify as commanded by the subpoenas.
- 97. Instead, APS and Pinnacle West filed an earlier special action and declaratory judgment proceeding in this Court seeking relief stopping Commissioner Burns from enforcing the subpoenas against them and Defendant Brandt. That action was assigned case number CV2016-014895.
- 98. In that action, APS and Pinnacle West challenged Commissioner Burns' authority as an individual Commissioner to issue the subpoenas, and challenged the subpoenas as a violation of APS's and Pinnacle West's First Amendment rights under the United States Constitution. Those challenges were never decided, and on March 8, 2017, APS and Pinnacle West voluntarily withdrew that action.

99.

opportunities for influence over individual Commissioners or key Commission staff, including those expenditures that may allow a regulated entity like APS and its parent organization to directly or indirectly influence action or votes by support of campaign activities, charitable or other civic functions, or deceptive lobbying practices.

100. On February 7, 2017, Commissioner Burns filed and initiated a new administrative proceeding, identified with Docket No. RU-00000A-17-0035 (the "New

Since the filing of the earlier action, Commissioner Burns has continued his

investigation into expenditures, or potential expenditure activities, by Arizona Corporation

Commission-regulated entities, intervenors or other interested parties that may create

administrative proceeding, identified with Docket No. RU-00000A-17-0035 (the "New Docket") before the Arizona Corporation Commission. The processing is aimed at investigation into the facts surrounding opportunities for undisclosed influence of Commissioners, Commission candidates or Commission staff through financial expenditures or benefits made or extended by regulated monopoly utilities, intervenors in Commission proceedings, and other stakeholders in Commission business and development of appropriate new transparency and disclosure policies and/or rules addressing such issues.

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

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

- 103. Commissioner Burns has scheduled a publicly noticed workshop to occur in the New Docket on March 23, 2017, at which time he intends to discuss information, materials and comments received in response to the New Docket announcement and call for submission of comments and information. He also intends at that time to take testimony from relevant individuals with knowledge, information or expertise concerning the transparency and disclosure issues that are the subject of the New Docket.
- 104. Commissioner Burns intends to and needs to use the information subpoenaed from APS and Pinnacle West for, among other appropriate and authorized activities of his office, the investigation and rule development contemplated by the New Docket.
- 105. The subpoenas issued by Commissioner Burns that are the subject of the APS Parties' claims were and remain appropriate and lawful and authorized as part of the proceedings in the New Docket. Commissioner Burns was not required to obtain or maintain authorization for such subpoenas from any other Commissioner or the Commission as a whole to file and enforce them in connection with the New Docket.
- 106. The Defendants have no legal right to object to or refuse to comply fully and timely with the subpoenas in connection with the New Docket proceedings. Their refusal to do so will materially and adversely impact Commissioner Burns' ability to carry out his lawful and constitutionally authorized responsibilities in connection with the New Docket issues and all other issues identified above.
- 107. On or about March 6, 2017, Commissioner Boyd Dunn issued a letter to Commissioner Burns and the other Commissioners concerning proceedings in the New Docket in which he contended that "I believe we should exercise restraint and acknowledge that the pending lawsuit [by APS and Pinnacle West] is the proper place to resolve the legitimacy of the subpoena [sic] and the scope of the Commission's authority to require disclosure of Contributions under Arizona law." A true and correct copy of Commissioner Dunn's letter is attached hereto as Exhibit 3.
- 108. While Commissioner Burns disagrees with Commissioner Dunn's belief that the Commissioners should not proceed with the New Docket matters at this time, and

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

CLAIM FOR DECLARATORY RELIEF

The Commissioner is Entitled to a Declaratory Judgment

- 109. The Defendants have indicated through counsel for APS and Pinnacle West that they intend to preserve their objections to and refuse to comply with portions of the subpoenas they previously objected to. A true and correct copy of a letter from such counsel on that point is attached here as Exhibit 4.
- 110. Thus, Commissioner Burns and the Defendants are at an impasse regarding the Defendants' obligations to timely and full comply with the subpoenas and Commissioner Burns' rights and authority to demand such compliance.
- 111. The portions of the subpoenas that the Defendants refuse to comply with seek information, records and testimony that relate to the ratemaking, corporate stability, corporate wrongdoing, health and safety, compelled speech and improper influence issues over which the Commission is authorized and responsible to regulate and for which each individual Commissioner is entitled to conduct an investigation, including examinations of the books, records and agents of the regulated monopoly, APS, and its affiliate, Pinnacle West.
- 112. Without the Court's confirmation that Commissioner Burns is fully authorized to issue and demand full and timely compliance with the subpoenas by APS and Pinnacle West, Commissioner Burns' legal rights and authorities will be denied and the rights of Arizona citizens to the operation of their Corporation Commission in accordance with its constitutional and statutory powers shall be unlawfully impaired.
- 113. The respective rights of a key elected state official and of a regulated monopoly and its affiliates and executives are therefore in dispute and need to be resolved.

- Uniform Declaratory Judgments Act, A.R.S. § 12-1831, et seq., to a full and final declaration that he is fully authorized and entitled to demand from the Defendants, individually and collectively, the full and timely compliance with the subpoenas that are the subject of this action, and that he is not required to obtain consent, approval, or authority from any of the other Commissioners to enforce the subpoenas.
- 115. The rights of Commissioner Burns to have the subpoenas fully and timely complied with by the Defendants are a matter of grave statewide importance of a constitutional dimension. Should any of the Defendants indicate in the course of these proceedings that they intend not to fully and timely comply with the subpoenas according to the declaration of this Court, Commissioner Burns is entitled, per the terms of A.R.S. § 12-1838, as otherwise provided by Arizona law, and as necessary for the Court to protect and enforce its jurisdiction, to further relief including any appropriate injunctive orders, contempt rulings or sanctions necessary to compel compliance with the declaration of this Court and the terms of the subpoenas.
- 116. WHEREFORE, Commissioner Burns is entitled to entry of a final judgment in favor of Commissioner Burns and against the APS Parties, on the following terms:
 - A. Entering a final declaratory judgment confirming that Commissioner Burns is fully authorized and entitled to demand from the APS Parties, individually and collectively, full and timely compliance with the subpoenas that are the subject of this action, and that he is not required to obtain consent, approval, or authority from any of the other Commissioners to enforce the subpoenas;
 - B. Entering whatever injunctive or other relief, including contempt or sanction orders, against the APS Parties compelling their full and timely compliance with the subpoenas may become necessary to enforce the final declaration of the Court;
 - C. Awarding Commissioner Burns, if and to the extent authorized by law, his attorneys' fees and costs; and

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

William A. Richards

Alan Baskin

2901 North Central Avenue, Suite 1150

Phoenix, Arizona 85012

Attorneys for Plaintiff Commissioner Robert Burns



Michael K Jeanes, Clerk of Court

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K. Dyer, Deputy

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1 BASKIN RICHARDS PLC 2901 N. Central Avenue, Suite 1150 Phoenix, Arizona 85012 Telephone No. 602-812-7979 Facsimile No. 602-595-7800 E-mail: brichards@baskinrichards.com; alan@baskinrichards.com; lross@baskinrichards.com 5 Name and Arizona State Bar No.: William A. Richards #013381 6 Alan Baskin #013155 7 Leslie A. Ross #027207 Attorneys for Plaintiff Commissioner Robert Burns 8 9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 10 IN AND FOR THE COUNTY OF MARICOPA 11 COMMISSIONER ROBERT BURNS, a Case No. CV2017-001831 12 member of the Arizona Corporation Commission, in his official capacity, 13 PLAINTIFF'S RESPONSE TO Plaintiff, 14 DEFENDANTS' MOTION TO DISMISS 15 (Expedited Oral Argument Requested) 16 ARIZONA PUBLIC SERVICE COMPANY, an Arizona public service corporation, and 17 (Assigned to the Honorable James T. PINNACLE WEST CAPITAL CORPORATION, an Arizona corporation, and Blomo) 18

DONALD BRANDT, an individual,

Defendants.

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Arizona Corporation Commission ("ACC") Commissioner Robert Burns asks the Court to exercise its authority under the Arizona Constitution and the Uniform Declaratory Judgments Act, A.R.S. § 12-1831, et seq., to decide the powers the Arizona Constitution grants him to issue and enforce investigatory subpoenas as part of ACC ratemaking and rulemaking proceedings. [Complaint, at ¶¶'s 5-6, 109-116]. A ripe dispute exists between the parties over Commissioner Burns' constitutional and statutory authority to issue and enforce two subpoenas requiring records and testimony from the Defendants. [See Complaint at ¶¶'s 7-108 and Ex. 4]. And, Arizona precedent provides multiple independent reasons why the

discretionary doctrines of primary jurisdiction and exhaustion of remedies cannot apply, such as: 1) the issues presented here fall squarely in the traditional jurisdiction of the courts to interpret constitutional provisions, are not constitutionally delegated exclusively to the ACC, and require no special agency expertise; 2) the issues presented are questions of Commissioner Burns' constitutional jurisdiction; 3) the doctrines limit judicial appeals by parties to an agency proceeding, not the relief requested by an elected member of the agency itself who has individual governmental powers; 4) the administrative process here is, at best, permissive; 5) there is no pending proceeding to exhaust; and 6) the administrative process would be futile. Those doctrines are especially inapplicable because Defendants Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation ("Pinnacle West") previously conceded the Court's power to decide these issues without awaiting any administrative ruling, and have just recently reversed course hoping to delay disclosures harmful to APS before it gets its latest round of substantial rate increases pushed through the ACC. The Court should act quickly, just like APS originally said it could, and address Commissioner Burns' claims.

I. Commissioner Burns Seeks a Ruling on the Broad Subpoena Powers Arizona's Framers Individually Granted Him in the Arizona Constitution.

Arizona's constitutional framers created the ACC as Arizona's fourth branch of state government, and gave its elected members a unique combination of sovereign executive, legislative and judicial powers. See, e.g. Ariz.Const., art. XV, §§ 3-5, 13-14, 17, 19; State v. Tucson Gas, Elec. Light & Power Co., 15 Ariz. 294, 305 (1914) ("The functions of the Corporation Commission are not confined to any of the three departments named [legislative, executive and judicial branches], but its duties and powers pervade them all"); see Ariz. Corp. Comm'n v. Ariz. ex rel. Woods, 171 Ariz. 286, 290-291 (1992) ("Woods"). The framers sought to overcome the undue influence large corporations had wielded against consumer interests in traditional legislative and judicial arrangements, and intended that the ACC commissioners provide a uniquely protective form of governmental powers "primarily for the interest of the consumer." Tucson Gas, Elec. Light & Power Co., 15 Ariz. at 308, 138 P. at 786; see also Woods, 171 Ariz. at 291, 830 P.2d at 811.

The framers focused the ACC's regulatory powers principally on preventing corruption

and consumer overreaching by "public service corporations,' which include private utilities [like APS]" (citing John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz.St.L.J. 1, 88 (1988); Ariz.Const., art. XV. *Woods*, 171 Ariz. at 290-291. Commissioner Burns' elected position is therefore part of the intentional Arizona constitutional check on the powers of monopoly utilities like APS.

The two principal constitutional powers the Arizona Constitution grants the ACC to counter monopoly overreaching are: 1) the authority to set limited rates that companies like APS can charge consumers; and 2) the authority to set rules and regulations governing the behavior of the utility monopolies. Arizona Constitution at Article XV, § 3 provides:

The corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state, . . . 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;

(emphasis added); see also Woods, 171 Ariz. at 290-291.

Recognizing that the ACC commissioners would need full disclosure and transparency into monopoly activities to fulfill their rate-setting and rulemaking powers, the Constitution further expressly delegated the commissioners broad investigatory powers, including subpoena and deposition powers. Ariz.Const., art. XV, § 4. The Constitution is clear that these powers are delegated not just to the ACC, but also separately to each of the individual members like Commissioner Burns. The Arizona Constitution states, at Article XV, § 4:

The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several 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.

(emphasis added); see also A.R.S. § 40-241 ("each commissioner" may conduct inspections of

 corporate books or examinations under oath of corporate officials). The Arizona Supreme Court has affirmed that this provision entitles Commissioner Burns not only to investigate the records and operations of APS, but also of its affiliated companies like Pinnacle West. *Woods*, 171 Ariz. at 295. Thus, the questions Commissioner Burns raises in his Complaint about a commissioner's power to issue and enforce an investigatory subpoena (*see* Complaint, at ¶¶'s 109-116) implicate powers derived directly from the Arizona Constitution that must be answered by interpreting the constitutional framers' intent.

II. The Subpoenas at Issue Seek Evidence at the Heart of a Commissioner's Constitutional Responsibilities.

Commissioner Burns' investigatory powers are exceedingly broad. Indeed:

... courts give the Commission "wide berth" when they review the validity of Commission investigations. [citation omitted]. In fact, "an appropriately empowered agency 'can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." [citations omitted]. In other words, "the Commission must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the Commission's regulatory authority." SEC v. Brigadoon Scotch Distrib. Co., 480 F.2d 1047, 1052-53 (2nd Cir. 1973). See also EEOC v. Kloster Cruise Ltd., 939 F.2d 920, 922 (11th Cir. 1991) (court must enforce subpoena if agency makes plausible assertion of jurisdiction and information sought is not plainly incompetent or irrelevant to any lawful purpose of the agency).

Carrington v. Ariz. Corp. Comm'n, 199 Ariz. 303, 305 (App. 2000).² As set forth in Commissioner Burns' detailed Complaint, he has multiple reasons to believe that the subpoenas will help him adequately develop a factual basis for determining matters within the ACC's oversight. [See Complaint, at ¶¶'s 7-106]. The following summarizes some of them.

Commissioner Burns issued the two disputed subpoenas only after concerns crescendoed during the 2014 ACC election that APS was attempting to use the financial might

The constant exposure to such deep scrutiny is the price APS and Pinnacle West pay for the special economic benefits of being a state-sanctioned monopoly. *Woods*, 171 Ariz. at 290; *Davis v. Corp. Comm'n*, 96 Ariz. 215, 218 (1964) ("The monopoly is tolerated only because it is to be subject to vigilant and continuous regulation by the Corporation Commission, . . .")

² Note that the reference in *Carrington* to courts "review[ing] the validity of Commission investigations" is itself a tip-off that such matters are not consigned to agency review.

it earns off utility customers for undue political influence. That race saw some \$3.2 million spent by "dark money" independent expenditure groups ("IEGs") both to defeat candidates widely viewed as disfavored by APS and to support candidates widely seen as APS-backed. [See Exs. "A", "B"; Ex. "C" at 4-8]³. The source of the "dark money" support, which dwarfed the amount of campaign funds normally spent on ACC races, is generally suspected to be APS or its parent, Pinnacle West. [See id.] Yet, when Commissioner Burns sought voluntary disclosure by APS and Pinnacle West of their roles in the dark money contributions, they refused. [See Ex. "D", at Exs. 2-6].

The decision by a regulated monopoly and its parent to keep secret financial and other efforts to orchestrate political victories for their favored candidates is troubling. As is the companies' refusal to disclose how they structure the ubiquitous "marketing" and "charitable" spending that results in APS branding on public buildings and government or community events. Commissioner Burns has heard the repeated cry of incredulous APS consumers wondering why they are paying to have a regulated monopoly, who needs no marketing to gain customers, spend so heavily on public events of no direct value to its consumers. He has heard objections to forced political speech, complaining that APS and Pinnacle West increase customer rates only to use millions in revenues to support political candidates the companies favor, but which individual consumers may not.

The consumer concerns are well justified. After all, Pinnacle West publicly acknowledges in securities filings that "[w]e derive essentially all of our revenues and earnings from our wholly-owned subsidiary, APS." [See Ex. "E" (excerpts of Pinnacle West 10-K) at 3]. So, even if, as APS contends, the political, charitable and marketing spending comes from Pinnacle West's income, Pinnacle West's almost exclusive reliance on APS revenues means its political spending depends on monies earned off APS customers. Also, Commissioner

The numerous exhibits attached to and referenced in this Response do not convert the motion to one for summary judgment because they were either matters appended to the complaint, are matters of public record, or elaborate on matters alleged specifically in the Complaint and that Defendants are already on notice of. *See Strategic Dev. & Constr., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 64 (App. 2010).

 Burns is motivated by his first-hand experience with APS effectively using the threat that it will pull funding of government events to motivate another government official to express support to Commissioner Burns on ACC business APS wished to influence.

Equally disconcerting, Pinnacle West has publicly announced that it received grand jury subpoenas from the United States Attorney for the District of Arizona seeking "information principally pertaining to the 2014 statewide general election races in Arizona for Secretary of State and for positions on the ACC," including "records involving certain Pinnacle West officers and employees, including the Company's Chief Executive Officer [Defendant Brandt], as well as communications between Pinnacle West personnel and a former ACC Commissioner." [See Complaint at ¶ 81; Ex. "E", at 27]. Finally, APS and Pinnacle West recently announced that they will remain very active in political campaign spending, and that in 2016 Pinnacle West spent over \$10 million to support political speech groups or influence elections. [See Ex. "F" at 4-5]. While refusing to disclose any involvement in the "dark money" spending of 2014, APS and Pinnacle West promise they will not relent in attempts to influence ACC elections. The ongoing risk of APS financially "capturing" commissioners poses a clear and present danger to APS utility consumers.

All the foregoing raise legitimate concerns that: 1) APS and Pinnacle West factor their expected costs for political spending, "marketing" and lobbying into their ACC proposed rate calculations; 2) APS and Pinnacle West's investments in commissioners require commissioner disqualifications in APS matters; 3) APS and Pinnacle West may have violated Arizona law and coordinated "dark money" contributions to gain the allegiance of sitting commissioners; 4) APS and Pinnacle West embrace efforts to financially "capture" commission seats that Arizona consumers cannot effectively counter without effective mandatory transparency and disclosure rules; and 5) APS may be hiding behind its "parent" to conceal unlawful or at least publicly suspect efforts to unduly influence commissioners in their favor. These issues squarely fall within the concerns that can and should be addressed by an ACC commissioner.

A. Rate Making Issues.

APS and Pinnacle West contend they do not make campaign expenditures, or politically

influential marketing or charitable contributions, from APS's funds, but only from Pinnacle West's income. However, this accounting sleight of hand does not lessen the near certainty that APS's rate requests to the ACC are intended and calculated to provide sufficient excess ratepayer revenue to pay just such expenses. As noted above, the many millions Pinnacle West apparently spends to support or oppose political candidates or causes, and to grease wheels with government officials by supporting their local civic events, must come from APS ratepayer payments – the nearly exclusive source of all income to Pinnacle West.

Moreover, Pinnacle West regularly publishes financial performance expectations concerning dividends, earnings and even return on equity for its shareholders, prospective shareholders, potential business partners and potential financing sources.⁴ Pinnacle West even provides prospective investors details of its ACC rate hike requests, and in a recent forecast discussing the current APS rate-setting case, Pinnacle West announced its "indicated annual dividend is \$2.62 per share; targeting ~ 5% annual dividend growth." [*Id.* at 8-17; 20].

Anticipated dividends, net earnings and returns are logically determined only *after* Pinnacle West subtracts its anticipated corporate expenses. To forecast dividends, earnings, growth or ROE figures, Pinnacle West must first know what it expects to spend in future periods, including on political contributions, marketing for APS, charitable contributions, or lobbying. If the resulting post-expense net profits are not enough to meet target goals like its published 5% annual dividend growth rate, Pinnacle West must either adjust its expense plans or seek higher net returns on its exclusive source of income – APS revenues. Given that Pinnacle West has so regularly engaged in substantial "marketing" spending and indicates it will continue to pump millions into election cycles, Pinnacle West shows no sign of adjusting expenses. It must therefore ensure that the ratepayer income it is generating is sufficient to

⁴ Pinnacle West frequently issues "forward-looking statements based on current expectations, including statements regarding our earnings guidance and financial outlook and goals." [See Ex. "G", at 2]. In promoting itself to investors Pinnacle West touts "[a]nnual dividend growth targets" and its consolidated "return on equity" or ROE figure. [Id. at 3]. The ROE helps describe how Pinnacle West balances profitability, asset management and financial leverage so investors can assess whether they will receive a desired return on their investment.

cover such expenses and still meet its publicized dividend, earnings and ROE targets.

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Pinnacle West can make sure such expenses are covered with sufficient profits to spare by making adjustments to items like the "rate of return" it bakes into its ACC rate requests for APS. [See Ex. "G", at 11]; see Arizona Corp. Comm'n v. Arizona Pub. Serv. Co., 113 Ariz. 368, 370 (1976) ("The company is entitled to a reasonable return") There can be little doubt that Pinnacle West and APS ensure that APS's rate requests, especially its "rate of return" requests, are set to guarantee Pinnacle West will both have all the monies it plans to use for political campaign spending and influence peddling, with more than enough left over to meet its published financial targets. Thus, APS must logically build its rate requests using planned political speech expense data. This means that the financial and budgeting records and operational details Commissioner Burns seeks through his subpoenas will likely show that APS is asking the ACC to approve consumer rate increases designed to reimburse (directly or indirectly) political expenses even though ratepayers might find such expenditures offensive, wasteful or unduly expensive. Proof from APS and Pinnacle West that they are seeking to ensure coverage of such expenses would demonstrate they are violating ACC policy and justify downward adjustments of APS's rate requests. APS understandably wants to avoid the downside that comes with disclosure, but the subpoenas seek evidence critical to Commissioner Burns' advocating for appropriate rates and protecting consumers paying them.

B. Commissioner Disqualification Issues.

In deciding an APS rate case, the ACC Commissioners exercise, in part, their judicial function. State ex rel. Corbin v. Arizona Corp. Comm'n, 143 Ariz. 219, 226 (App. 1984) ("[I]n a rate-making proceeding the process by which the Commission gathers evidence through evidentiary hearings and reaches its ultimate decision is quasi-judicial in nature."). As recognized by the U.S. Supreme Court, when elected adjudicatory officers have received a highly disproportionate share of their campaign support from a party appearing before them, fundamental due process policies may disqualify them from participating in the proceeding. Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868 (2009). Here, the campaign support clandestinely given to Commissioners Forese and Little in 2014, and the enormous spending

Pinnacle West openly used its APS revenues for in support of Commissioners Tobin and Dunn in the 2016 election raise substantial disqualification issues under the *Caperton* standard.

After all, current Commissioners Forese and Little were reportedly the beneficiaries of some \$3.2 million in "dark money" IEG spending in 2014 while their own campaign committees spent, according to state records, just \$269,550.00 and \$260,573.32 respectively. [See Ex. "C" at 4-6; Exs. "H" and "I"]. The campaign expenditure reports of the Arizona Secretary of State credit Commissioner Forese with \$492,637.00 in direct, supportive IEG expenditures, and Commissioner Little with \$494,138.00, almost double the amounts their own campaign committees expended. [See id.] If that money came from Pinnacle West/APS, the over 180% increase in campaign support could trigger disqualification of Commissioners Forese and Little from the APS rate case and other proceedings impacting APS under Caperton. See Caperton, 556 U.S. at 873-890 (requiring disqualification when party's contributions in support of judicial candidate's election campaign was 3 times the candidate's own committee expenditures.) The connection of Commissioners Forese and Little to the dark money already motivated a motion to disqualify those commissioners in an earlier APS rate request case which APS withdrew after the motion was filed. [See Exs. "C" and "J", at 11].

Moreover, while Pinnacle West lavishly spent APS-generated money in support of Commissioners Tobin and Dunn in the 2016 campaign in a very public display [see Ex. "F", at 5-6; Ex. "K" at 1-2], the total of around \$4 million it apparently contributed to help get them elected helped boost their IEG support to 25 times their own campaign committee spending for Commissioner Tobin and over 11 times for Commissioner Dunn. [See Ex. "K", at 1-2; Exs. "Q" and "R"]. This publicly disclosed spending could equally justify disqualification under Caperton, particularly if the investigation reveals any evidence of even indirect coordination between APS/Pinnacle West operatives and their campaigns. ⁵

In a political chess move proving just how sophisticated the APS/Pinnacle West machine is, Pinnacle West threw Commissioner Burns onto its misleading "Arizona's Sustainable Solar Team" ads in 2016 along with Commissioners Tobin and Dunn. [See Ex. "K", at 2]. This was done without Commissioner Burns' approval or agreement, and as an "independent expenditure" he could not stop it. Likely hoping to spark negative voter suspicions of

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The documents and testimony required by the contested subpoenas will disclose whether APS or Pinnacle West agents engaged in any direct or indirect coordination with other commissioners' campaigns, which could violate Arizona's election laws, particularly for Clean Elections candidates. *See* A.R.S. §§ 16-922 (independent and coordinated expenditures); 16-941 – 16-943. And, it will allow Commissioner Burns to exercise his constitutional duty to protect Arizona consumers and determine whether evidence mandating disqualification of any other commissioners exists before they vote on APS's rate request.

C. Investigation and Development of New Transparency and Disclosure Rules.

If APS has used its relationship with Pinnacle West to mask political contributions funded from the wallets of APS customers, that scandal alone mandates implementation of new, robust transparency and disclosure ("T&D") rules to prevent such clandestine behavior and keep commissioner candidates honest, independent and accountable to the consumers the Arizona Constitution protects. Commissioner Burns has launched just such an investigatory rulemaking proceeding (the "T&D Docket"). [See Complaint at ¶¶'s 100-106; Ex. "L" hereto]. Investigating the need for, and the most effective designs for such rules fits precisely within his express powers under Ariz.Const., art XV, § 3 to make "reasonable rules, regulations, and orders, by which [public service] corporations shall be governed in the transaction of business within the state". It also follows the nationwide "modern trend in administrative law and procedure to open regulatory process as broadly as possible to public input" so that fully educated consumers can help combat the evils of "regulatory capture" by well-heeled regulated entities or special interests. New Cingular Wireless PCS, LLC v. Pub. Utils. Com., 246 Cal. App. 4th 784, 805 n.20, 201 Cal. Rptr. 3d 652, 669 (2016) (citing Schwarcz, Preventing Capture Through Consumer Empowerment Programs: Some Evidence from Insurance Regulation, in Preventing Regulatory Capture, Special Interest Influence and How to Limit It (Carpenter & Moss edits., 2014) at p. 369). Commissioner Burns has

hypocrisy given Commissioner Burns' ongoing public dispute with APS/Pinnacle West, APS/Pinnacle West knew that if their open support did not negatively impact Commissioner Burns, the advertising would at least help ensure he was a minority of one on the Commission. Given those facts, Commissioner Burns would not be disqualified from addressing APS issues.

appropriately dually issued the disputed subpoenas in the rulemaking docket [see Complaint, at ¶¶'s 100-101], and they will provide key, relevant evidence for those purposes, as well.

III. APS's and Pinnacle West's Reversal of Position Seeks to Delay Disclosure That Might Upend Expedited Approval of their Rate Request.

A few months ago, APS and Pinnacle West acknowledged the Court's powers to resolve the questions Commissioner Burns raises here without further administrative proceedings. They asked this Court to decide Commissioner Burns' powers and stop enforcement of the same subpoenas in Maricopa County Superior Court Case No. CV2016-014895 (the "APS Lawsuit"). [See Ex. "D" at 2, lns. 12-3 and ¶"s 4, 5, 49-56, 58-66, 68 - 71; Ex. "M" at 1-2]. But APS filed that challenge when it still risked having its majority support on the ACC eroded in the fall, 2016 elections. After Pinnacle West spent millions in campaign support, the election went APS's way, encouraging Defendants to withdraw their action, and now argue instead that the Court must instead leave the issue to the very ACC commissioners whose disqualification may be required if the subpoenaed information is provided.

APS's reversal also coincides with its recent moves to quickly conclude its pending request to the ACC for substantial rate increases. APS moved expeditiously to secure a "settlement" among a large number of the participants in its rate case, the hearing procedures in the rate case are now engaged, and a real possibility exists that APS will try to obtain ACC commissioner approval of their rate increase within the next two to three months. [See Exs. "N" and "O"; Ex. "P", at 8; see also Emergency Motion for Speedy Hearing filed herewith]. This perhaps best explains their switch from advocating a judicial solution to now promoting an administrative process that has not moved an inch on a motion to quash they filed on September 9, 2017. The Defendants' goal to avoid disclosures that may justify deeper investigation of APS's financial and rate-calculating practices, or raise material questions of commissioner disqualification, before APS's rate hikes passed is best served by avoiding this Court's intervention. However, Commissioner Burns and the public interests he serves have substantial reasons to ensure subpoena compliance before APS's rate case is concluded

IV. The Doctrines Defendants Rely On Are Not Applicable for Multiple Reasons.

Defendants argue that the doctrines of primary jurisdiction and exhaustion of remedies

 preclude judicial review. However, those are doctrines of discretionary judicial administration that may not be applied summarily. *See, e.g., Campbell v. Chatwin*, 102 Ariz. 251, 257 (1967) (describing exhaustion doctrine as a rule of judicial administration subject to numerous exceptions). The doctrines can be applied only when their unique purposes are met, and are subject to many independent exceptions, several of which apply here. *See, e.g., Farmers Inv. Co.*, 136 Ariz. at 373 (holding that "[t]he exhaustion doctrine must be applied in each case with an 'understanding of its purposes and of the particular administrative scheme involved."")

For example, the Arizona courts hold that the exhaustion and primary jurisdiction doctrines should not be applied when the question presented is one with which the courts routinely deal and special agency expertise is not needed. *See Campbell*, 102 Ariz. at 257 (holding exhaustion not applicable to cases "in which the agency's expertise is unnecessary."); *Farmers Ins. Co*, 136 Ariz. at 373 (same); *Coconino Cty.*, 214 Ariz. at 87-88 (declining to apply primary jurisdiction doctrine where questions were commonly decided by courts and did not require special agency expertise); *Mountain States*, 120 Ariz. at 431-32 (same). Nor do they apply "where jurisdiction of the agency is being contested," where the agency proceeding is merely permissive, not mandatory, where the administrative process could be futile to the plaintiff, or "where irreparable harm will be caused to the party by requiring the exhaustion of the administrative remedies." *Campbell*, 102 Ariz. at 257; *see Univar*, 122 Ariz. at 224 (same); *Farmers Ins. Co.*, 136 Ariz. at 373 (same); *Coconino Cty.*, 214 Ariz. at 86. Every one of these exceptions applies to Commissioner Burns' claims.

A. Commissioner Burns Seeks Interpretation of his Constitutional Authority, Which is a Common Court Function Requiring No Agency Expertise.

The "doctrine of primary jurisdiction is a discretionary rule created by the courts to

⁶ See also Univar Corp. v. City of Phoenix, 122 Ariz. 220, 224 (1979) (recognizing multiple situations where exhaustion doctrine does not apply); Coconino Cnty. v. Antco, Inc., 214 Ariz. 82, 90 n.4 (App. 2006) (describing "primary jurisdiction, a discretionary doctrine") (emphasis in original); Farmers Ins. Co. v. Arizona State Land Dep't., 136 Ariz. 369, 373 (App. 1982)(detailing exhaustion exceptions); Campbell v. Mountain States Tel. & Tel. Co., 120 Ariz. 426, 431 (App. 1978) ("Mountain States") ("[W]e decline to apply the discretionary doctrine of primary jurisdiction so as to vest exclusive primary jurisdiction in the Corporation Commission."); see also Wonders v. Pima Cty., 207 Ariz. 576, 578 (App. 2004) (same).

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effectuate the efficient handling of cases in specialized areas where agency expertise may be useful." Wonders, 207 Ariz. at 578 (quoting Mountain States, 120 Ariz. at 430). Similar deference for special agency expertise justifies the exhaustion doctrine. See, e.g., Campbell, 102 Ariz. at 257 (rejecting exhaustion of remedies doctrine "where the agency's expertise is unnecessary.") Thus, the doctrines are designed to minimize judicial interference in questions specifically delegated by the legislature to determination through an agency holding special expertise, see, e.g., Original Apartment Movers, Inc., 179 Ariz. at 422, and where the questions presented raise "issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion", Mountain States, 120 Ariz. at 430.

However, where the questions presented fall within the conventional responsibilities of the courts or involve the types of issues judges commonly resolve, ceding primary jurisdiction to an agency or forcing a party to subject their claims to agency resolution is not appropriate. See, Campbell, 102 Ariz. at 257; Univar, 122 Ariz. at 224; Mountain States, 120 Ariz. at 431-32; Wonders, 207 Ariz. at 578. Mountain States provides an apt example for this case. There, the court considered whether an individual phone service customer's tort and contract claims against a phone service provider should be dismissed as within the primary jurisdiction of the ACC and subject to a "detailed investigation and hearing process within the Commission" that the Arizona Legislature established under A.R.S. § 40-321, et seq. to address customer complaints with adequacy of phone service. 120 Ariz. at 428. While the court acknowledged that "it is undeniable that [the plaintiff's] claims do involve the adequacy and method of telephone service and that such issues are within the Commission's jurisdiction under A.R.S. § 40-203 and § 40-321(A)," it found "these issues are not predominant." Id. at 431-32. Rather, the plaintiff's complaint "deal[t] with much more than the mere manner and means of providing telephone service." Id. at 432. Instead, the "case involve[d] relatively simple tort and contract issues revolving around a central inquiry: whether, under traditional judicial principles, [the utility defendants] committed a civil wrong against appellant." Id. Thus, "the claims' most important aspects involve facts and theories of tort and contract far afield of the Commission's area of expertise and statutory responsibility" and which were "the type of

traditional claims with which our trial courts of general jurisdiction are most familiar and capable of dealing." *Id.* There was no need to employ the primary jurisdiction doctrine. *Id.*

The predominant questions surrounding Commissioner Burns' constitutional authority to issue and enforce the subpoenas involve interpretation of the state constitution provisions at Article XV, Sections 3 and 4. And, just as in *Mountain States*, deciding such questions is squarely within the traditional role and expertise of the courts, not the ACC. Moreover, the Legislature has enacted no statute granting the ACC exclusive jurisdiction to determine the scope of each Commissioner's individual constitutional powers. So, the most important aspects of Commissioner Burns' claims raise "the type of traditional claims with which our trial courts of general jurisdiction are most familiar and capable of dealing." *Mountain States*, 120 Ariz. at 432. Deferral to agency jurisdiction or expertise is inappropriate and unnecessary.

B. The Dispute Commissioner Burns' Raises Over His Jurisdiction Can Never Be Subject to the Primary Jurisdiction or Exhaustion Doctrines.

When the question at hand is whether a government official has jurisdiction or authority to take a particular act, neither the primary jurisdiction nor the exhaustion of remedies doctrines preclude immediate judicial review. See Trico Elec. Coop. v. Ralston, 67 Ariz. 358, 363 (1948) (holding that a question of the ACC's jurisdiction to take certain actions was a matter for the courts and not subject to the exclusive jurisdiction of the ACC); Coconino Cnty., 214 Ariz. at 86 (exhaustion of remedies does not apply where agency jurisdiction is in issue); Murphy v. Bd. of Med. Exam'r of State of Ariz., 190 Ariz. 441, 448 (App. 1997) (superior court properly determined jurisdictional bounds of agency even though agency had not issued a final decision within definition of A.R.S. § 12-901(2)); see also, Moulton v. Napolitano, 205 Ariz. 506, 512-13 (App. 2003) (doctrine of exhaustion of administrative remedies not applicable where subject matter jurisdiction of agency was contested).

Here, APS and Pinnacle West have defied Commissioner Burns' subpoenas in large part, contesting that he has no authority to require the withheld information and to compel the deposition of their executive. [See Complaint at ¶¶'s 96-98, 109, and Ex. 4]. Commissioner Burns disagrees, and asks the Court to decide the jurisdictional question. This is the classic type of jurisdictional contest excluded from the primary jurisdiction and exhaustion doctrines.

C. The Doctrines of Primary Jurisdiction and Exhaustion Do Not Apply to the Agency's Request for a Ruling on its Own Powers.

The procedural doctrines Defendants invoke apply only to parties to an administrative proceeding, not to the agency and its decisionmakers. Nor do the administrative proceeding rules Defendants invoke apply to a sitting commissioner. For example, the Defendants rely on A.R.S. § 40-253 which provides that "[a]fter any final order or decision is made by the commission, any party to the action or proceeding or the attorney general on behalf of the state may apply for a rehearing" (emphasis added). The statute delineates between the commission as the decision-making body and the "party" who must apply for a rehearing. The ACC's administrative rules define who constitutes "Parties" in ACC proceedings, and they do not include the commissioners. See Ariz. Admin. Code R14-3-103. More, the ACC rule allowing a witness or person subpoenaed to file a motion to quash with the ACC creates a relief option for subpoenaed parties – it does not tie the commissioners to that process or restrict them in any way from seeking judicial declarations of their constitutional subpoena rights. See Ariz. Admin. Code R14-3-109(O). The administrative "remedies" are simply not designed for or limiting upon the Commissioner who is really an extension of the agency.

D. The Administrative Process Defendants Invoke is, at Best, Permissive Only.

The exhaustion doctrine also never applies where the administrative process invoked is merely permissive or elective and not mandatory. See, e.g., Bentivegna v. Powers Steel & Wire Products, Inc., 206 Ariz. 581, 585 (App. 2003); Stated another way, a request for judicial review is not barred for failure to exhaust administrative remedies "unless . . . recourse to that remedy is required by statute or agency rule." Bonnichsen v. United States, Dep't. of the Army, 969 F.Supp. 614, 623 (D.Or. 1997) (emphasis added). As noted above, nothing in the ACC statutes or rules prevent Commissioner Burns from seeking a declaration of his constitutional subpoena and investigatory powers. Administrative exhaustion is not required.

E. Defendants' Motions to Quash Have Been Denied; Waiting is Futile.

"The exhaustion doctrine is concerned with the timing of judicial review of administrative action." *Wonders*, 207 Ariz. at 578 (*quoting Mountain States*, 120 Ariz. at 429). Where the issue posed to the Court is not a challenge to a still-pending administrative

proceeding, the exhaustion doctrine does not apply. *See id.; see also Bonnichsen,* 969 F.Supp. at 623 (noting that for exhaustion rule to apply, there must exist "a remedy to exhaust.") Nor is exhaustion required where there was no administrative proceeding pending when the plaintiff's complaint was filed. *See Coconino Cnty.*, 214 Ariz. at 86. That is the case here.

APS fails to disclose that its motions to quash in the APS rate case have already been denied under the ACC procedural order for that case which provides that if a motion is not decided within twenty (20) calendar days of filing, it is deemed denied. [See Ex. "P", at 10, lns. 20-22]. That order had already worked a denial of APS's original motion to quash filed with the ACC on September 9, 2016. The second motion to quash Defendants filed with the ACC on March 10, 2017 [Motion to Dismiss, Exh. "1"], has also not been acted upon, and therefore was denied by operation of the procedural order in the pending rate case by March 30, 2017, the same day Defendants filed their Motion to Dismiss. Thus, as to the subpoenas issued in the rate case, there is no administrative proceeding left to exhaust.

Also, even a party to a mandatory administrative proceeding need not continue that proceeding if it would be futile or harmful. *Coconino Cty.*, 214 Ariz. at 86. The remaining commissioners allowed both of Defendants' motions to quash to be denied administratively by inaction. Commissioner Burns cannot change that. He is but one vote among five, and has faced recent attempts to block him from even putting matters on the ACC agenda. Waiting on something to happen at the agency is futile and prejudicial.

V. The Administrative Procedures Act Does Not Preclude a Court Decision.

Defendants also argue that Commissioner Burns was unauthorized to issue a subpoena in the T&D Docket because the Arizona Administrative Procedures Act ("APA") at A.R.S. § 41-1023(A) allows only for voluntary disclosure of information in a rulemaking proceeding. [Motion to Dismiss at 5:3-12.] Not only would such a rigid rule violate the law recognizing incredibly broad and flexible rulemaking and discovery powers in the ACC commissioners⁷,

⁷ The Arizona courts caution against "imparting an unintended rigidity to the administrative process" of rulemaking at the ACC and thereby rendering the ACC "inflexible" and incapable of dealing with many of the complex and specialized problems arising within its constitutional authority. *Ariz. Corp. Comm'n v. Palm Springs Util. Co.*, 24 Ariz. App. 124, 128 (1975).

the Defendants' argument ignores the superiority of state constitutional provisions to statutes.

"[P]ower vested in the Commission by the Constitution cannot be limited by statute." Ariz. Corp. Comm'n v. Superior Court, 105 Ariz. 56, 62 (1969); see Ariz. Const., art. XV, § 6 (legislature is empowered to enlarge, but not decrease, ACC's powers); Mountain States, 120 Ariz, at 431. And the Constitution expressly authorizes individual commissioner subpoenas in support of rulemaking proceedings. After all, Ariz. Const., art. XV, § 4 grants each member of the commission "the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena" for the enumerated purposes of the ACC. The purposes constitutionally enumerated at Article XV, § 3 to which those subpoena powers refer expressly include: 1) "mak[ing] reasonable rules, regulations, and orders, by which such [public service] corporations shall be governed in the transaction of business"; and 2) "mak[ing] and enforce[ing] reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the . . . patrons of such corporations. Neither the constitutional provisions, nor the corollary statute authorizing investigations of Defendants' records (A.R.S. § 40-241), express any limitations on the subpoena power just because the investigation supports rulemaking. And the constitutionally intended breadth of commissioner investigatory and rulemaking powers, see Carrington, 199 Ariz. at 305 (investigatory powers); Palm Springs Util. Co., 24 Ariz. App. at 128 (rulemaking powers), confirm that the powers to compel testimony and records expressed in Ariz.Const., art. XV, § 4 are inconsistent with and supersede any statute that might limit rulemaking investigations to toothless voluntary productions. The APA is irrelevant.

VI. Conclusion

None of the bars the Defendants propose applies to the straightforward declaratory judgment claim seeking determination of Commissioner Burns' constitutional authority to issue and enforce the subpoenas. The Court must deny the motion to dismiss and move this case forward as expeditiously as possible.

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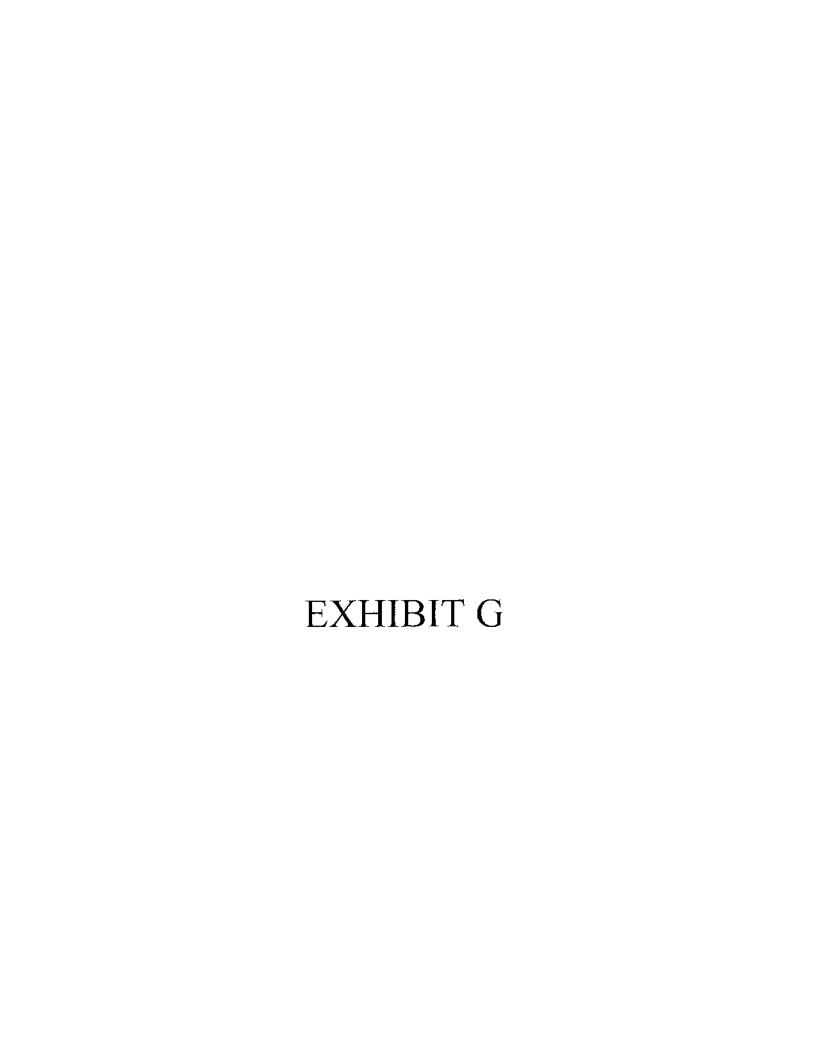
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1	DATED this 18th day of April, 2	2017.
2		
3		BASKIN RICHARDS PLC
4		
5		/s/ William A. Richards
6		William A. Richards Alan S. Baskin
7		Leslie M. Ross 2901 N. Central Avenue, Suite 1150
8		Phoenix, AZ 85012 Attorneys for Plaintiff Commissioner
10		Robert Burns
11	ORIGINAL of the foregoing e-filed	
12	on this 18th day of April, 2017.	
13	COPY of the foregoing served via TurboCourt this 18th day of April, 2017	
14	to the following parties:	
15	Mary O'Grady	
16	Joseph Roth OSBORN MALEDON, P.A.	
17	2929 N. Central Ave., Floor 21 Phoenix, AZ 85012	
18	Attorneys for Defendants	
20	/s/ Katie Bredlow	
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Political Participation Policy

2016

1. PURPOSE

- 1.1. Pinnacle West Capital Corporation ("Pinnacle West", "we" or "the Company") participates in the democratic process to advance our long-term business interests and the interests of our customers, communities and shareholders. We believe that broad political participation contributes to a strong democracy, promotes good government and encourages sound policymaking.
 - 1.1.1. Our company's principal subsidiary, Arizona Public Service Company ("APS") has the responsibility to provide customers in our service territory with safe, reliable and affordable electricity. Because Pinnacle West and APS participate in a wide range of business activities to fulfill this responsibility, policy decisions at the federal, state and local levels can have profound impacts on virtually all aspects of our business.
 - 1.1.2. Our experience and expertise give us an informed perspective on how public policy can affect our company, our customers, our communities, and Arizona's energy future. We have a responsibility to our customers, communities and shareholders to participate in the political process, when appropriate, so that our perspectives are heard and so that we can develop productive working relationships with governmental decision-makers.
- 1.2. The purpose of this Policy is to promote compliance with all applicable federal, state and local laws, rules, and regulations surrounding political contributions by Pinnacle West in a manner consistent with our values. This Policy also describes our decision-making and oversight processes for political spending and for reporting of political contributions, in which processes both management and our Board of Directors play important roles.

2. POLICY STATEMENTS

- 2.1. As one of the largest and longest-serving local businesses in Arizona, Pinnacle West takes its commitment to corporate citizenship seriously. Being a good corporate citizen may include being informed about issues, encouraging our employees to volunteer and participate in their communities, speaking publicly about the issues of the day, sponsoring a political action committee and, where permitted by law, considering the contribution of corporate funds to political candidates, political parties, political action committees, and organizations that engage in political activities. These activities may also include independent expenditures, or the sponsoring of a political action committee that engages in independent expenditures, in relation to elections of candidates to office, get-out-the-vote efforts, and ballot initiatives and referenda. In general, a political expenditure is independent when it is not made in cooperation, consultation, or at the request or suggestion of a candidate, a candidate's agent or authorized political committee, or a political party.
- 2.2. Many factors guide our political contribution decisions. In general, we may support candidates and organizations that share an interest in public policy that furthers our business objectives and promotes our mission of creating a sustainable energy future for Arizona. The Company's contribution decisions are based on what is in the best interests of Pinnacle West and not based on the personal preferences of our executives.
- 2.3. We do not make corporate contributions to political candidates or office holders where prohibited by law. Arizona law prohibits companies from making political contributions to candidates for Arizona offices. Under no circumstances will any political contribution be given in anticipation of, in recognition of, or in return for any official act.
- 2.4. We may contribute to entities organized and operating under section 527 of the Internal Revenue Code. These organizations are established primarily for the purpose of influencing the outcome of elections of candidates for public office. We may also use corporate funds to make independent expenditures or to contribute to organizations engaged in lobbying or political campaign activity or that make independent expenditures at the federal, state or local level, as permitted by law.
- 2.5. Pinnacle West may directly sponsor a registered political action committee that engages in independent expenditures concerning specific candidates, initiatives, or referenda. Pinnacle West is committed to ensuring that any separate sponsored political action committee meets or exceeds any reporting requirements to the various governmental agencies that collect contribution and expenditure data.
- 2.6. Pinnacle West may participate in federal, state, and local issues through membership in trade associations, which we join to represent various business and industry interests. In addition, we actively promote the economic health of the jurisdictions we serve 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 roles, any of these organizations may be subject to lobbyist registration and disclosure reporting obligations, with their reports made public by federal and state agencies overseeing lobbying activities.

2.7. Pinnacle West discloses its political contributions as required by law. In addition, we will provide a voluntary annual report of contributions subject to this Policy as set forth in Section 5 below. The report will be posted to our website as part of this Policy not later than March 1 of the succeeding calendar year. We expect those organizations in which we are members or to whom we provide contributions to meet their own obligations to report the Company's contribution to the appropriate government authorities.

3. THE PINNACLE WEST POLITICAL ACTION COMMITTEE

- 3.1. Pinnacle West encourages its employees to be active members of their communities. Along with participation in civic, charitable and volunteer activities, this includes participation in the political process. All eligible employees of Pinnacle West may make voluntary contributions to the Pinnacle West Political Action Committee ("PNWPAC"). The PNWPAC is a voluntary, nonprofit, non-partisan political association sponsored by Pinnacle West to provide an easy and effective means for eligible employees to become politically involved if they wish to do so.
- 3.2. The PNWPAC is directed by a board comprised solely of employees, which makes and approves all decisions regarding political contributions and budget. Potential contributions are reviewed by a five-member PNWPAC executive committee, which makes recommendations for contributions to be considered by the PNWPAC board. The articles of organization of the PNWPAC can be found here. Applicable law permits administrative support of PNWPAC from Pinnacle West. PNWPAC provides timely disclosure of its political contributions as required by law.
- 3.3. Pinnacle West encourages employees to participate in the political process personally by voting and by supporting candidates of their choosing. Such participation is not in the Company's name or on its behalf. Employees will not be reimbursed for personal political contributions or expenses, either directly, through compensation increases, or otherwise.
- 3.4. Some Pinnacle West employees choose to serve their communities by holding public office.
 We encourage these employees and appreciate their spirit of public service. Employees of
 Pinnacle West who wish to campaign for, or serve in, public office must first notify their supervisor and the Senior Vice President of Public Policy.
 - 3.4.1. Employees are not permitted to campaign on work time; nor can they use company resources to further their campaigns. Employees must clearly communicate that they are acting as private individuals, that their views are their own, and that they are not representing or endorsed by the Company.
 - 3.4.2. Employees who hold public office must recuse themselves from matters directly involving Pinnacle West. If an employee in public office is uncertain whether an issue directly affects Pinnacle West, he or she should contact the Senior Vice President of Public Policy.

4. OVERSIGHT

4.1. Corporate contribution decisions are made primarily by our Vice President, Federal Affairs, and Vice President, State and Local Affairs, based on the guidelines and objectives described in

Pinnacle West Capital Corp. - About Us - Corporate Governance - Political Participation Policy
this Policy. These executives typically receive input from other members of our senior
management team, including our Chief Executive Officer.

- 4.2. During the first quarter of each calendar year management reviews with the Corporate Governance Committee of the Board of Directors its anticipated governmental affairs strategies for the year, including the priorities for the Company's political expenditure and lobbying activities. During the year, management periodically reports to the Corporate Governance Committee on the progress of the Company's strategy, including any significant activities not encompassed within the initial strategy discussion. Following each of its meetings, the Corporate Governance Committee provides a summary to the Board of the matters involving political activities, which were discussed at the meeting. In addition, as part of its reporting responsibilities to the Board after year-end, management summarizes the actions taken in furtherance of its governmental affairs strategies during the year.
- 4.3. At least annually, the Corporate Governance Committee reviews this Policy and recommends to the Board any revisions it deems necessary. Our Board's oversight of our governmental affairs strategy ensures compliance with applicable law and alignment with our policies and Code of Ethics and Business Practices.

5. ANNUAL REPORT OF POLITICAL CONTRIBUTIONS

5.1. In 2016, Pinnacle West made the following contributions to political parties, political action committees, candidates for political office and other entities organized and operating under section 527 of the Internal Revenue Code:

Organization	Contribution
AZ GOP (Arizona Republican Party)	\$175,000
AZ Democratic Party	\$60,000
AZ GOP Victory (Arizona Republican Party)	\$410,000
Dodie Londen	\$25,000
Emerge	\$10,000
Let's Grow Virginia PAC	\$6,000
Common Good, VA PAC	\$5,000
AZ House Victory PAC	\$5,000
AZ Senate Victory PAC	\$5,000
Morning in Nevada PAC	\$2,500
National LT Governors Association	\$10,000
Senate Republican Leadership Fund	\$15,000

5.2. In 2016, Pinnacle West made the following payments to trade associations that may have been used for lobbying-related or other political activities as reported to us by the trade associations. These amounts are not permitted to be deducted as ordinary and necessary business expenses under the Internal Revenue Code:

Organization	Non-Deductible Portion of Dues/Payments
American Legislative Exchange Council	\$10,000

Edison Electric Institute	\$132,150
Nuclear Energy Institute	\$17,306
Arizona Tax Research Association	\$10,617

5.3. In 2016, Pinnacle West made the following payments to entities organized under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code which may have used some of the proceeds for independent political expenditures, including but not limited to ballot initiatives, or lobbyingrelated or political campaign activities, as permitted by law:1

Organization	Amount
Arizona Cattle Feeders Association ²	\$400,000
Market Freedom Alliance	\$4,130,500
Expect More Arizona	\$100,000
Republican Governor's Association	\$75,000
Arizona Free Enterprise Club	\$50,000

5.4. In 2016, Pinnacle West made the following independent political expenditures either directly or in support of an independent expenditure political action committee sponsored by the Company:

Organization	Amount
Arizona Coalition for Reliable Electricity	\$4,175,000
Arizonans for Responsible Drug Policy	\$10,000
Arizona Grassroots Action PAC	\$550,000
Yes on Prop 493	\$2,500

6. LINKS TO OFFICIAL REPORTS

- 6.1. Contributions to federal elections may be found on the Federal Elections Commission website at http://www.fec.gov/pindex.shtml.
- 6.2. Contributions to Arizona state and local elections can be found on the Arizona Secretary of State's website at https://www.azsos.gov/elections/campaign-finance-reporting and the Citizens Clean Elections Commission website at http://www.ccec.state.az.us/en/resources.
- 6.3. Reports on the Company's federal lobbying activity can be found on the websites of the U.S. House of Representatives at http://clerk.house.gov/public_disc/financial.aspx and the U.S. Senate at http://www.senate.gov/legislative/lobbyingdisc.htm#lobbyingdisc=lda.
- 1. In addition, Pinnacle West made a post-election contribution of \$5,000 to Trump for America, a 501(c)(4) supporting the Presidential transition team, but which was not engaged in ballot initiatives, lobbying-related or political campaign activities otherwise discussed in

2.501(c)(5).

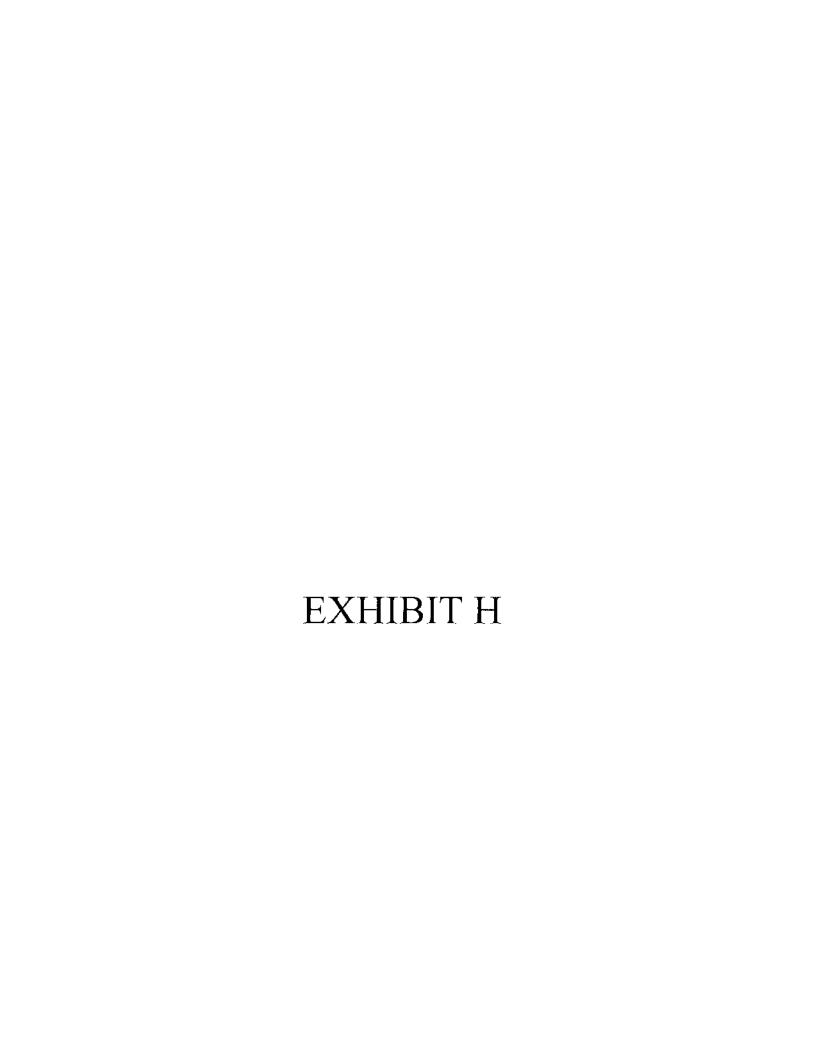
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APS to Be a Player in Elections and Report Spending Annually

Officials with Arizona's largest electric utility say they'll freely and publicly spend money on political races.

| March 18, 2017, at 9:06 p.m.

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PHOENIX (AP) - Officials with Arizona's largest electric utility say they'll freely and publicly spend money on political races.

Through its parent company, Arizona Public Service Co. announced Friday it will continue to involve itself in political campaigns, including those for people who will regulate the company.

It also will report political contributions every March.

Pinnacle West Capital Corp. owns APS, a regulated utility that serves 1.2 million residential and commercial customers in 11 of 15 Arizona counties.

A policy statement from Pinnacle West said "we have the responsibility to our customers, communities and shareholders to participate in the political process, when appropriate, so that our perspectives are heard and so that we can develop productive working relationships with governmental decision makers."

APS officials said they were making the policy public to increase transparency.

"This voluntary report goes beyond our legal requirements to provide additional information about our contributions," APS spokeswoman Anna Stewart said. "Pinnacle West supports organizations and issues that further our mission of creating a sustainable energy future for Arizona."

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Some critics of APS don't like the new policy.

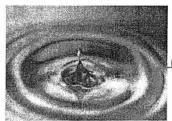
Arizona Corporation Commissioner Robert Burns is suing APS, Pinnacle West and its CEO to enforce subpoenas related to money spent on elections.

Others said the utility should not be involved in commission elections at all.

"APS should be ashamed of itself that it feels the need to buy elections of a commission that regulates them," Tom Chabin, who unsuccessfully ran for a commission seat last year, told The Arizona Republic. "No other private utility in the state of Arizona participates in commission campaigns. That is the standard APS should live by."

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6	IN THE UNITED STA	TES DISTRICT COURT PUBLIC DISCLOSURE	
7	FOR THE DISTRICT OF ARIZONA		
8	United States of America,	CR-17-00713-PHX-JJT(JZB)	
9	Plaintiff,		
10	vs.	INDICTMENT	
11	V 5.	VIO: 18 U.S.C. § 371	
12	(1) Gary Leonard Pierce, (Counts 1-8)	(Conspiracy) Count 1	
13	(2) George Harry Johnson,	18 U.S.C. § 666(a)(1)(B) (Federal Programs Bribery)	
14	(Counts 1-8)	Count 2	
15 16	(3) James Franklin Norton, and (Counts 1-8)	18 U.S.C. §§ 1341 and 1346 (Honest Services Mail Fraud)	
17	(4) Sherry Ann Pierce, (Counts 1-8)	Count 3	
18	Defendants.	18 U.S.C. §§ 1343 and 1346 (Honest Services Wire Fraud) Counts 4-8	
19		County 1 6	
20	THE GRAND JURY CHARGES:		
21	INTRODU	UCTION	
22	At all times material to this Indictment	:	
23	The principal individuals, entities and	terminology referenced in this Indictment	
24	include the following:		
25	1. Defendant GARY LEONARD PIERCE was an elected Commissioner of the		
26	Arizona Corporation Commission and the Chairman in 2011 and 2012. The annual salary		
27	for Arizona Corporation Commission Commissioners in 2011 and 2012 was \$79,500.		
28	2. The Arizona Corporation Commission (hereinafter "ACC") was established		

pursuant to the Arizona Constitution, and regulates utilities in the State, including water, electricity, gas, sewer and telephone. The ACC has five Commissioners who are elected statewide who: function in an executive capacity; function in a legislative capacity when adopting rules and regulations; and act in a judicial capacity while sitting as a tribunal and making decisions in contested matters. The ACC has ultimate responsibility for final decisions on the granting or denial of rate adjustments, enforcement of safety and public service requirements, and approval of securities matters.

- 3. Defendant GEORGE HARRY JOHNSON was the owner of Johnson Utilities, LLC, dba Johnson Utilities Company (hereinafter "Johnson Utilities, LLC"), a utility that provided water and wastewater services to customers in Pinal County, Arizona, headquartered in Scottsdale, Arizona, and that is subject to the regulation of the ACC.
- 4. Defendant GEORGE HARRY JOHNSON was the owner of Johnson International, Inc., an entity engaged in real estate development and headquartered in Scottsdale, Arizona.
- 5. Defendant JAMES FRANKLIN NORTON was a lobbyist for R&R Partners, a firm engaged in government affairs among other endeavors, and a retained lobbyist for defendant GEORGE HARRY JOHNSON and Johnson Utilities, LLC, before the ACC and other entities within the State of Arizona.
- 6. Defendant SHERRY ANN PIERCE was the spouse of defendant GARY LEONARD PIERCE.
- 7. An unindicted coconspirator (hereinafter the "unindicted coconspirator") acted at the direction of defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE.

BACKGROUND RE MATTERS BEFORE THE ARIZONA CORPORATION COMMISSION

8. On August 24, 2010, all five ACC Commissioners, including defendant GARY LEONARD PIERCE, considered whether defendant GEORGE HARRY JOHNSON, as the owner of Johnson Utilities, LLC, should have his personal income tax expenses

reimbursed, and paid for, by payments made by the Utility's customers, and whether to increase the Utility's wastewater division's revenues through a rate base increase. Defendant GARY LEONARD PIERCE, and the other four Commissioners, rejected these proposals. With respect to the recovery of personal income taxes, the five ACC Commissioners agreed with Arizona's Residential Utility Consumer Office and ACC Staff in finding that, "As we determined in Decision No. 71445 (December 23, 2009), it is not appropriate or in the public interest to allow pass through entities such as the Company to recover personal income tax expenses through rates. The Company's request is not reasonable and will be denied." With respect to the requested rate base increase, the five ACC Commissioners noted in their decision that, "The fair value of the Company's wastewater division rate base is \$136,562, and therefore a rate of return analysis is not reasonable. Authorizing an operating margin of 3 percent produces rates and charges that are just and reasonable." Johnson Utilities, LLC, had proposed a fair value rate base of \$17,479,735. See ACC Decision No. 71854, Docket No. WS-02987A-08-0180, dated August 25, 2010.

9. In an ACC Open Meeting on September 6, 2011, defendant GARY LEONARD PIERCE voted to increase the fair value of the wastewater division rate base for Johnson Utilities, LLC, from \$136,562 to \$18,244,755, thereby increasing the Utility's revenues, and to "Include explicit language for Johnson Utilities to request income tax expense prospectively in a future A.R.S. § 40-252 Petition if the Commission changes its policy on imputed income tax expense." Two Commissioners voted with defendant GARY LEONARD PIERCE, one Commissioner abstained from the vote and one Commissioner dissented. In the dissent, the Commissioner stated, "With no additional evidence or an amended recommended opinion and order presented to the Commissioners, there was nothing new to persuade me that we erred in Decision No. 71854. Given the lack of new evidence or information, I do not believe that the record supports the vote to amend Decision No. 71854 and the resulting increases in rates for Johnson Utilities' customers."

See ACC Decision No. 72579, Amending Decision No. 71854, Docket No. WS-02987A-

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08-0180, docketed on September 15, 2011.

- On June 15, 2012, defendant GARY LEONARD PIERCE, as an ACC Commissioner, docketed a draft policy proposing that the ACC allow pass-through entities (such as Johnson Utilities, LLC) to recover personal income tax expenses through rates charged to customers. See Policy Statement on Income Tax Expense for Tax Pass-Through Entities: ACC Docket No. W-00000C-06-0149, dated June 15, 2012.
- On June 27, 2012, ACC Staff stated, "Staff recommends continuation of the Commission practice to not recognize income taxes as a component of the cost of service when utility services are rendered by an entity classified as an S-Corp or certain LLCs." See Staff Report - In the Matter of the Arizona Corporation Commission - Generic Investigation (Docket No. W-00000C-06-0149), and an attached Supplemental Staff Report, both dated June 27, 2012.
- On February 12, 2013, defendant GARY LEONARD PIERCE, along with three commissioners, voted to allow the recovery of personal income taxes by pass-through public service corporations (such as Johnson Utilities, LLC). One Commissioner dissented and stated, "Asking rate payers to pay personal income taxes for shareholders of utilities organized as subchapter "S" corporations or limited liability corporations (LLCs) (aka "pass-through entities") is neither justifiable nor good public policy. Personal income taxes are not a utility expense." See ACC Decision No. 73739, Docket No. W-00000C-06-0149, docketed on February 22, 2013.

COUNT ONE Conspiracy (18 U.S.C. § 371)

- The factual allegations contained in paragraphs 1 through 12 of this indictment are 13. incorporated by reference and re-alleged as if fully set forth herein.
- Beginning at a time unknown to the Grand Jury, but by no later than in or about 14. August 2011, and continuing through in or about February 2013, in the District of Arizona, and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE, along with others known

Fraud).

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against the United States: Title 18, United States Code, Sections 666(a)(1)(B) (Federal Programs (a) Bribery); Title 18, United States Code, Sections 1341 and 1346 (Honest Services Mail (b)

and unknown to the Grand Jury, did knowingly and willfully agree and conspire with each

other, and others known and unknown to the Grand Jury, to commit the following offenses

Fraud); and Title 18, United States Code, Sections 1343 and 1346 (Honest Services Wire (c)

OBJECT OF THE CONSPIRACY AND SCHEME TO DEFRAUD

- The object of the defendants' conspiracy was for defendant GEORGE HARRY JOHNSON to unlawfully pay money and property to defendants GARY LEONARD PIERCE and SHERRY ANN PIERCE, through JAMES FRANKLIN NORTON and the unindicted coconspirator, in exchange for defendant GARY LEONARD PIERCE, as a Commissioner for the ACC, to unlawfully execute official actions benefiting defendant GEORGE HARRY JOHNSON and Johnson Utilities, LLC, with respect to matters pending before the ACC and thereby deprive the ACC, the customers of Johnson Utilities, LLC, and the citizens of the State of Arizona of their right to the honest services of elected members of the ACC through bribery and concealment of material information.
- During the period of the conspiracy, defendants GARY LEONARD PIERCE and 16. SHERRY ANN PIERCE fraudulently and unlawfully received \$31,500.00 from defendant GEORGE HARRY JOHNSON, through defendant JAMES FRANKLIN NORTON, in exchange for defendant GARY LEONARD PIERCE's favorable and unlawful official actions on matters before the ACC, including Decision Number 72579, in ACC, Docket Number WS-02987A-08-0180, which added back into a rate base a wastewater division plant of \$18,244,755 which was previously disallowed, and the docketing of a proposed policy change in ACC, Docket Number W-00000C-06-0149, which lead to the ACC permitting utilities organized as subchapter S corporations and limited liability companies

 (a.k.a. LLCs and pass-through entities) to charge their ratepayers for the utility owner's personal income taxes.

- 17. In order to accomplish the payment of money and property to defendant GARY LEONARD PIERCE, defendant JAMES FRANKLIN NORTON agreed to act as a conduit between defendants GEORGE HARRY JOHNSON and GARY LEONARD PIERCE, and in so doing was offered the opportunity to purchase land valued at approximately \$350,000 for defendant GARY LEONARD PIERCE, and caused an unindicted coconspirator to act as a consultant for defendant GEORGE HARRY JOHNSON for approximately \$6,000 per month plus expenses, and hire defendant SHERRY ANN PIERCE and pay her approximately \$3,500 per month during the period of from in or about November 2011 through in or about August 2012. The purpose of this consulting arrangement was to conceal the direct payment of funds by defendant GEORGE HARRY JOHNSON to defendant GARY LEONARD PIERCE.
- 18. During the period of the conspiracy, the unindicted coconspirator set up a separate consulting firm and bank checking account, and billed defendant GEORGE HARRY JOHNSON approximately \$6,000 per month plus expenses. In order to hide the conspiracy and scheme to defraud, the unindicted coconspirator, while acting at the direction of defendants GEORGE HARRY JOHNSON and JAMES FRANKLIN NORTON, asked defendant SHERRY ANN PIERCE to submit monthly invoices for approximately \$3,500; sent to, and received emails from, defendant SHERRY ANN PIERCE; took defendant SHERRY ANN PIERCE to lunch; and gave defendant SHERRY ANN PIERCE simple tasks some of which were performed and reviewed by defendant GARY LEONARD PIERCE. Upon receipt of the approximately \$6,000 invoices plus expenses, defendant GEORGE HARRY JOHNSON paid the unindicted coconspirator via checks drawn on an account held by Johnson, International, Inc. Upon receipt of the checks, the unindicted coconspirator then sent monthly checks to defendant SHERRY ANN PIERCE for approximately \$3,500 via a separate checking account.

OVERT ACTS

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- 19. In furtherance of the conspiracy, and to effect the objects of the conspiracy, defendants and others known and unknown to the Grand Jury, committed, or caused to be committed, the following overt acts, among others.
- 20. On or about August 4, 2011, defendant GARY LEONARD PIERCE mailed and docketed a letter to parties requesting proposed amendments to aid in the ACC's consideration of a Petition to amend ACC Decision Number 71854, which related to an increase in water and wastewater rates for customers of Johnson Utilities, LLC.
- 21. On or about August 9, 2011, defendant GEORGE HARRY JOHNSON and Johnsons Utilities, LLC, filed a proposed amendment modifying ACC Decision Number 71854 concerning relief related to an increase in water and wastewater rates for customers of Johnson Utilities, LLC and other matters favorable to defendant GEORGE HARRY JOHNSON.
- 22. On or about August 11, 2011, defendant GARY LEONARD PIERCE introduced and docketed an Amendment, titled "Pierce Proposed Amendment #1," for ACC Docket Number WS-02987A-08-0180, in support of Johnson Utilities, LLC, Agenda for discussion and consideration at the ACC Open Meeting on August 11, 2011.
- 23. On or about August 11, 2011, during a meeting of the ACC, defendant GARY LEONARD PIERCE voted to direct ACC staff to prepare and docket an order incorporating the requested modifications outlined in his "Pierce Proposed Amendment #1," including "The inclusion of language permitting the Company to request income tax expense prospectively in a future A.R.S. § 40-252 Petition if the ACC changes its policy relating to imputed income tax expense," for ACC Docket Number WS-02987A-08-0180, for consideration at the ACC's September 2011 Open Meeting.
- 24. On or about September 6, 2011, at the ACC's September Open Meeting, defendant GARY LEONARD PIERCE called for a vote, and voted to accept, Johnson Utilities, LLC's, petition to amend ACC Decision Number 71854. In so doing, defendant GARY LEONARD PIERCE voted to authorize a rate increase for water and wastewater rates for

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by a three to two vote. Resulting ACC Decision Number 72579 included modifications, contrary to the recommendations of the ACC's staff, which defendant GEORGE HARRY JOHNSON had requested, including adding into the rate base for Johnson Utilities, Inc., \$18,244,755, which was previously disallowed, specifically \$10,892,391 for wastewater plant cost and \$7,352,364 related to affiliated profit. In the same proceeding and vote, defendant GARY LEONARD PIERCE voted to pass a provision which permitted defendant GEORGE HARRY JOHNSON's company to request personal income tax expense prospectively in a future A.R.S. § 40-252 Petition if the ACC changed its policy relating to imputed personal income tax expense.

25. On or about September 28, 2011, defendants GARY LEONARD PIERCE,

customers of Johnson Utilities, LLC, in Pinal County, Arizona. The vote passed the ACC

- SHERRY ANN PIERCE, JAMES FRANKLIN NORTON, and the unindicted coconspirator, met for dinner. During the meeting, the unindicted conspirator told defendant SHERRY ANN PIERCE that a contract and a confidentiality agreement would be created as part of her employment with the unindicted coconspirator's consulting firm. The purpose of the confidentiality agreement was to prevent defendant SHERRY ANN PIERCE from disclosing the nature of her employment and the source of the money to third parties.
- 26. On or about November 9, 2011, defendant GEORGE HARRY JOHNSON signed check number 6081, drawn on an account ending with 1236 held by Johnson International, Inc., for \$6,000, and made payable to the unindicted coconspirator's consulting firm.
- 27. On or about November 9, 2011, defendant SHERRY ANN PIERCE signed an "Independent Contractor Agreement" with the unindicted coconspirator's consulting firm.
- 28. On or about November 9, 2011, defendant SHERRY ANN PIERCE signed a confidentiality agreement related to her "Independent Contractor Agreement" with the unindicted coconspirator's consulting firm.
- 29. On or about November 10, 2011, defendants GEORGE HARRY JOHNSON and JAMES FRANKLIN NORTON met with the unindicted coconspirator, and defendant

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GEORGE HARRY JOHNSON gave check number 6081, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,000, and made payable to the unindicted coconspirator's consulting firm, to the unindicted coconspirator.

- On or about November 10, 2011, the unindicted coconspirator opened checking account ending with 5861 to be held in the name of the unindicted coconspirator's consulting firm.
- 31. On or about November 18, 2011, defendants GARY LEONARD PIERCE and SHERRY ANN PIERCE accepted a check, numbered one, drawn on an account ending with 5861, for \$3,500, from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.
- On or about December 8, 2011, defendant GEORGE HARRY JOHNSON signed check number 6084, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,000, and made payable to the unindicted coconspirator's consulting firm.
- On or about December 12, 2011, defendant SHERRY ANN PIERCE sent an invoice, via email, to the unindicted coconspirator, dated December 8, 2011, for "December Consulting Services as per Contract: \$3,500.00."
- On or about December 19, 2011, defendants GARY LEONARD PIERCE and 34. SHERRY ANN PIERCE accepted a check, numbered 1001, drawn on an account ending with 5861, for \$3,500, from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.
- On or about December 27, 2011, defendant GARY LEONARD PIERCE sent an 35. email to the unindicted coconspirator regarding the possible purchase of land valued at approximately \$350,000 by defendants GARY LEONARD PIERCE and JAMES FRANKLIN NORTON. In the email defendant GARY LEONARD PIERCE states,

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"Please pass on to Jim." The funds for the purchase were to be provided by defendant GEORGE HARRY JOHNSON.

- 36. On or about December 29, 2011, defendant GARY LEONARD PIERCE sent an email to defendant JAMES FRANKLIN NORTON regarding the possible purchase of land by defendants GARY LEONARD PIERCE and JAMES FRANKLIN NORTON with an opening offer to purchase of \$300,000. The email included a "Letter of Intent to Purchase" dated December 29, 2011, which listed defendants GARY LEONARD PIERCE and JAMES FRANKLIN NORTON as purchasers. In addition, in the email, defendant GARY LEONARD PIERCE advised defendant JAMES FRANKLIN NORTON that he would advise the real estate agent to take his name off the letter of intent so that defendant JAMES FRANKLIN NORTON "will be the buyer." The funds for the purchase were to be provided by defendant GEORGE HARRY JOHNSON.
- On or about January 13, 2012, defendant GEORGE HARRY JOHNSON signed 37. check number 6095, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,097.99, and made payable to the unindicted coconspirator's consulting firm.
- On or about January 31, 2012, defendants GARY LEONARD PIERCE and SHERRY ANN PIERCE accepted a check, numbered three, drawn on an account ending with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.
- On or about February 9, 2012, defendant GEORGE HARRY JOHNSON signed 39. check number 6099, drawn on an account ending with 1236, held by Johnson International, Inc., for \$7,084.80, and made payable to the unindicted coconspirator's consulting firm.
- On or about February 21, 2012, defendants GARY LEONARD PIERCE and 40. SHERRY ANN PIERCE accepted a check, numbered 1501, drawn on an account ending with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500,

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from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.

- On or about March 20, 2012, defendant GEORGE HARRY JOHNSON signed check number 6108, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,028.23, and made payable to the unindicted coconspirator's consulting firm.
- 42. On or about April 6, 2012, defendants GARY LEONARD PIERCE and SHERRY ANN PIERCE accepted a check, numbered 1502, drawn on an account ending with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.
- On or about April 11, 2012, defendant GEORGE HARRY JOHNSON signed check 43. number 6112, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,069.53, and made payable to the unindicted coconspirator's consulting firm.
- 44. On or about May 1, 2012, defendant GEORGE HARRY JOHNSON signed check number 6114, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,029.79, and made payable to the unindicted coconspirator's consulting firm.
- 45. On or about May 16, 2012, defendants GARY LEONARD PIERCE and SHERRY ANN PIERCE accepted a check, numbered 1503, drawn on an account ending with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.
- On or about June 5, 2012, defendant GEORGE HARRY JOHNSON signed check 46.

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number 6118, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,144.56, and made payable to the unindicted coconspirator's consulting firm.

- On or about June 11, 2012, defendants GARY LEONARD PIERCE and SHERRY ANN PIERCE accepted a check, numbered 1504, drawn on an account ending with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.
- On or about June 15, 2012, defendant GARY LEONARD PIERCE docketed a draft 48. "Policy Statement on Income Tax Expense for Tax Pass-Through Entities; Docket No. W-00000C-06-0149" before the ACC.
- On or about July 11, 2012, defendants GARY LEONARD PIERCE and SHERRY 49. ANN PIERCE accepted a check, numbered 1505, drawn on an account ending with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500, from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 7187, an account she jointly held with defendant GARY LEONARD PIERCE.
- 50. On or about July 31, 2012, the unindicted coconspirator sent an email to defendant SHERRY ANN PIERCE that advised that contract work for clients would be limited as of August 1, 2012.
- On or about July 31, 2012, defendant SHERRY ANN PIERCE sent an email to the 51. unindicted coconspirator regarding the end of payments from defendant GEORGE HARRY JOHNSON in which she stated, "I've really enjoyed working with and getting to know you better. Gary told me about his conversation about this with Jim so I was already aware."
- 52. On or about August 3, 2012, defendant GEORGE HARRY JOHNSON signed check

number 6128, drawn on an account ending with 1236, held by Johnson International, Inc., for \$6,027.48, and made payable to the unindicted coconspirator's consulting firm.

- 53. On or about August 9, 2012, the unindicted coconspirator sent an email to defendant SHERRY ANN PIERCE that advised, "Just got my final check in the mail while I was in Tucson so will get a check out to you tomorrow."
- 54. On or about August 13, 2012, defendants GARY LEONARD PIERCE and SHERRY ANN PIERCE accepted a check, numbered 1506, drawn on an account ending with 6130, held in the name of the unindicted coconspirator's consulting firm, for \$3,500 from the unindicted coconspirator. The original source of the money was defendant GEORGE HARRY JOHNSON. The check was endorsed by defendant SHERRY ANN PIERCE and deposited into an account ending with 9243, an account she jointly held with defendant GARY LEONARD PIERCE.
- 55. On February 12, 2013, as documented in ACC Decision No. 73739, Docket No. W-00000C-06-0149, docketed on February 22, 2013, defendant GARY LEONARD PIERCE voted to allow the recovery of personal income taxes by pass-through public service corporations (such as Johnson Utilities, LLC).

All in violation of Title 18, United States Code, Section 371.

COUNT TWO (Federal Programs Bribery) (18 U.S.C. § 666(a)(1)(B))

- 56. Paragraphs 1 through 55 of the Indictment are realleged and incorporated by reference as if fully set forth herein.
- 57. From in or about August 2011 to in or about February 2013, in the District of Arizona and elsewhere, defendant GARY LEONARD PIERCE, being an agent of the ACC, a political subdivision within the State of Arizona, which received benefits of \$10,000 in the one-year period from in or about January 2011 to in or about December 2011, and received benefits of \$10,000 in the one-year period from in or about January 2012 to in or about December 2012, from federal programs involving a grant, contract,

subsidy, loan, guarantee, insurance, and other forms of federal assistance, did corruptly

1 2 solicit, demand, accept, and agree to accept something of value intending to be influenced 3 and rewarded in connection with the business, transaction, and series of transactions of 4

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payment of the money.

such state government involving something of value of \$5,000 or more: namely, defendant 5 GARY LEONARD PIERCE, knowingly and willfully, solicited, accepted and agreed to accept money, ultimately totaling \$31,500, and solicited real property valued at 6 7 approximately \$350,000, from defendant JAMES FRANKLIN NORTON, a retained 8 lobbyist for Johnson Utilities, LLC, intending to be influenced and rewarded in connection 9 with matters Johnson Utilities, LLC, had pending before the ACC, including allowing defendant GEORGE HARRY JOHNSON's personal income tax expenses to be 10 reimbursed, and paid for, by payments made by the Utility's customers, and allowing a 11 significant increase in Johnson Utilities, LLC's wastewater division's revenues through a 12 13 rate base increase, and defendants GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE did knowingly and intentionally aid the 14 commission of the offense by routing payments and acting as a conduit of the money to 15

All in violation of Title 18, United States Code, Sections 666(a)(1)(B).

COUNT THREE (Honest Services Mail Fraud) (18 U.S.C. §§ 1341 and 1346)

defendant GARY FRANKLIN PIERCE in order to hide the true nature and purpose of the

- 58. Paragraphs 1 through 57 of the Indictment are realleged and incorporated by reference as if fully set forth herein.
- From in or about August 2011 to in or about February 2013, in the District of 59. Arizona and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE knowingly devised, intended to devise and participated in, a scheme and artifice to defraud and deprive the ACC, the customers of Johnson Utilities, LLC, and the citizens of the State of Arizona of their right to the honest services of elected members of the ACC through concealment

of material information and bribery in exchange for defendant GARY LEONARD PIERCE's material official actions.

60. On or about the date of the Count listed below, in the District of Arizona and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud and deprive, placed and caused to be placed in a post office and an authorized depository for mail, to be sent and delivered by the United States Postal Service and by a private and commercial interstate carrier, the following matter and thing:

Count	Date – On or About	Description
3	8/3/2012	Zions First National Bank Check Number 6128, dated August 3, 2012, for \$6,027.48, account holder Johnson International, Inc., Scottsdale, Arizona, mailed to the unindicted coconspirator via the United States Postal Service.

All in violation of Title 18, United States Code, Sections 1341 and 1346.

COUNTS FOUR THROUGH EIGHT (Honest Services Wire Fraud) (18 U.S.C. §§ 1343 and 1346)

- 61. Paragraphs 1 through 60 of the Indictment are realleged and incorporated by reference as if fully set forth herein.
- 62. From in or about August 2011 to in or about February 2013, in the District of Arizona and elsewhere, defendants GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE knowingly devised, intended to devise and participated in, a scheme and artifice to defraud and deprive the ACC, the customers of Johnson Utilities, LLC, and the citizens of the State of Arizona of their right to the honest services of elected members of the through concealment of material information and bribery in exchange for defendant GARY LEONARD PIERCE's

material official actions.

On or about the dates of the Counts listed below, in the District of Arizona and elsewhere, defendant GARY LEONARD PIERCE, GEORGE HARRY JOHNSON, JAMES FRANKLIN NORTON and SHERRY ANN PIERCE, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud and deprive, did knowingly transmit and cause to be transmitted, by means of wire and radio communications in interstate commerce, certain writings, pictures signals and sounds (i.e., emails and funds transfers) to and from the District of Arizona, as set forth in the chart below, each instance being a separate count of this Indictment:

Count	Date – On or About	Wire Communications From and To	Description
4	06/12/2012	Wells Fargo Bank, N.A. to Zions First National Bank	Settlement of Zions First National Bank Check Number 6118, dated June 5, 2012, for \$6,144.56, account holder Johnson International, Inc., Scottsdale, Arizona, payable to the unindicted coconspirator and deposited into a Wells Fargo Bank, N.A. account.
5	07/11/2012	First Fidelity Bank to Wells Fargo Bank, N.A.	Settlement of Wells Fargo Bank, N.A., Check Number 1505, dated June 29, 2012, for \$3,500.00, account holder the unindicted coconspirator, payable to, and endorsed by, defendant SHERRY ANN PIERCE, and deposited into a First Fidelity Bank account.

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Count	Date - On or About	Wire Communications From and To	Description		
6	07/31/2012	Defendant SHERRY ANN PIERCE to Coconspirator Acting as a Consultant	An email in which defendant SHERRY ANN PIERCE, via cox.net, stated to the unindicted coconspirator, via msn.com, "[I]'ve really enjoyed working with you and getting to know you better. Gary told me about his conversation about this with Jim so I was already aware. I'm assuming since it's as of August 1st that I should send you the invoice for July? It's attached but let me know"		
7	08/06/2012	Wells Fargo Bank, N.A. to Zions First National Bank	Settlement of Zions First National Bank Check Number 6128, dated August 3, 2012, for \$6,027.48, account holder Johnson International, Inc., Scottsdale, Arizona, payable to the unindicted coconspirator, and deposited into a Wells Fargo Bank, N.A. account.		
8	08/09/2012	The Unindicted Coconspirator to Defendant SHERRY ANN PIERCE	An email in which the unindicted coconspirator, via msn.com, advised defendant SHERRY ANN PIERCE, via cox.net, "[J]ust got my final check in the mail while I was in Tucson so will get a check out to you tomorrow."		
All in violation of Title 18, United States Code, Sections 1343 and 1346.					
A TRUE BILL					
/s/					
FOREPERSON OF THE GRAND JURY Date: May 23, 2017					
ELIZABETH A. STRANGE Acting United States Attorney District of Arizona					

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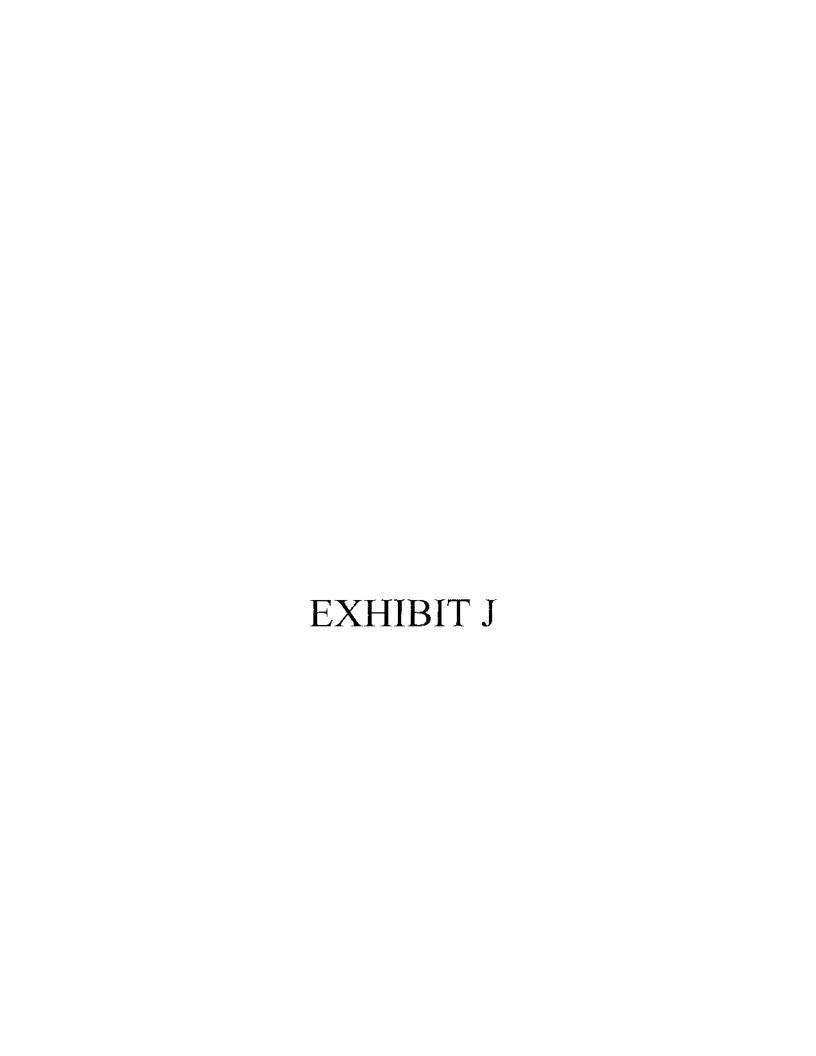
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/s/

FREDERICK A. BATTISTA FRANK T. GALATI Assistant U.S. Attorneys





STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

By

MARK BRNOVICH ATTORNEY GENERAL

May 4, 2016

No. I16-005 (R16-002)

Re: The authority of the Arizona Corporation Commission or individual Commissioners to obtain information from a public service corporation and its affiliates.

To: Commissioner Robert L. Burns Arizona Corporation Commission

Questions Presented

You have requested a formal opinion on the following questions:

- 1. "Does A.R.S. § 40-241 give an individual Commissioner the power to gather information related to a public service corporation and its affiliates' political contributions, lobbying and charitable contributions in order to ensure that all funds expended are consistent with the Commission's authority to set just and reasonable rates? In other words, does the statute give an individual Commissioner the power to look at this information because it is or may be reasonably necessary information for effective ratemaking and to protect the public interest?"
- 2. "Does A.R.S. § 40-241 permit an individual Commissioner to investigate the degree to which a public service corporation and its affiliates are intertwined in terms of organization, operation and structure in order to ensure the security and financial health of the

affiliates in order to protect consumers from overreaching and abuse by public service corporations and their affiliates such that an affiliate's operations do not hinder the operations of the public service corporation? Specifically, does the statute permit an individual Commissioner to inspect a public service corporation's and/or its affiliates' accounts, books, papers and documents in order to conduct such a review?"

3. "Does Article XV of the Arizona Constitution give the Commission and/or an individual Commissioner the power to require a public service corporation to report information about itself or about its parent, subsidiary, and other affiliated corporations relevant to the Commission's authority under Article XV, particularly in light of *Arizona Corporation Commission v. State of Arizona ex rel. Grant Woods*, 171 Ariz. 286, 830 P.2d 807 (1992); *Arizona Public Service Company v. Arizona Corporation Commission*, 157 Ariz. 532, 760 P.2d 532 (1988), and Article 8 of the Arizona Administrative Code (Affiliated Interest Rules)?"

Summary Answer

The questions presented inquire regarding the authority of the Arizona Corporation Commission (Commission) and individual Commissioners under Article XV of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") § 40-241.

The Commission has broad constitutional authority relating to reporting requirements and inspection of any Public Service Corporation ("PSC") and its affiliates. Under Article XV, Section 13 of the Arizona Constitution, the Commission has the power to require reports from PSCs and companies whose stock is offered for sale to the public ("Public Companies"), which could include PSC affiliates. Furthermore, under Article XV, Section 3, the Commission has the

¹ As used in this opinion, the term "affiliate" means any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, a PSC. See, e.g., A.A.C. R14-2-801(1).

authority to adopt rules reasonably necessary for effective ratemaking. Pursuant to this authority, the Commission has adopted the Affiliated Interest Rules, Ariz. Admin. Code ("A.A.C.") R14-2-801 through -806, which include reporting requirements that apply to both PSCs and certain affiliates.

The Legislature has also granted individual Commissioners limited powers under A.R.S. § 40-241. Under this statute, an individual Commissioner is authorized to inspect the accounts, books, papers, and documents of a PSC. It also authorizes an individual Commissioner to examine under oath officers, agents, and employees of a PSC in relation to the PSC's business and affairs. Therefore, a Commissioner may use the statutory authority provided by Section 40-241 to gather information from a PSC related to the amount spent by a PSC on political and charitable contributions and lobbying, so long as that authority is exercised within constitutional bounds. This authority also permits an individual Commissioner to gather information from a PSC regarding the degree to which it is intertwined with its affiliates (in terms of organization, operation, and structure). But, applying rules of statutory construction, the term "public service corporation" in this statutory provision does not include affiliates.

Background

Relevant Sources of Commission Authority

The Commission is a regulatory check on corporations "designed to promote both democratic control and competitive economic forces." *Ariz. Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 291 (1992). The Framers drafted Article XV of the Arizona Constitution, which establishes the Commission, with a "pronounced, progressive-era concern with regulating corporations, a concern enhanced by the perceived dominance of large railroad and mining companies during the territorial era." John D. Leshy, *The Arizona State Constitution* 356 (2d ed.

2013). The Framers did, however, "limit [the Commission's] most sweeping regulatory jurisdiction to [PSCs]." *Id.* at 357.

Article XV, Section 3 of the Arizona Constitution grants the Commission, but not individual Commissioners, the authority to set rates and make reasonable rules, regulations, and orders governing the transaction of business by PSCs in Arizona.² While some earlier cases construed the Commission's powers under this Section more broadly, Arizona courts have more recently assumed that the Commission's regulatory power under Section 3 is "restrict[ed] . . . to its ratemaking function," while acknowledging that the Commission has discretion in "determin[ing] . . . what regulation is reasonably necessary for effective ratemaking." Sierra Club—Grand Canyon Chapter v. Ariz. Corp. Comm'n, 237 Ariz. 568, 572 ¶ 10 (App. 2015), review denied (Feb. 9, 2016) (quoting Woods, 171 Ariz. at 294); see also Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc., 207 Ariz. 95, 111 ¶ 54 (App. 2004). Although Section 3 does not expressly address inspection, investigation, or reporting, the Arizona Supreme Court, based on the authority that Section 3 confers, upheld the Commission's Affiliated Interest Rules. Woods, 171 Ariz. at 297. These rules require: (1) Commission approval of a utility holding company's organization or reorganization and transactions between utilities and affiliates; (2) that books and records of affiliates that transact business with a utility be made available for inspection in

² Section 3 provides, in relevant part:

The corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state, and may prescribe the 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

certain respects; and (3) that reports of diversification plans for utilities and utility holding companies be provided to the Commission. *See* A.A.C. R14-2-801 through -806.

Under Article XV, Section 4 of the Arizona Constitution, the Commission and individual Commissioners may "inspect and investigate the property, books, papers, business, methods, and affairs of any [Public Company] . . . and of any [PSC] doing business within the state." The Legislature has also provided the Commission and individual Commissioners statutory authority regarding PSC inspections and examinations:

The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.

A.R.S. § 40-241(A).

Finally, Article XV, Section 13 authorizes the Commission, but not individual Commissioners, to require reports to the Commission under oath from PSCs and Public Companies, and to require that such companies provide such information "concerning their acts and operations" as may be required by law or by the Commission. *See also Ariz. Pub. Serv. Co. v. Ariz. Corp. Comm'n*, 157 Ariz. 532, 536 (1988) (interpreting Commission order issued under Section 13); A.R.S. § 40-204 (relating to reports by PSCs to Commission).

Limitations on Commission Authority

The United States Supreme Court has recognized a First Amendment right-of-association privilege against "compelled disclosure of affiliation with groups engaged in advocacy." NAACP v. Alabama, 357 U.S. 449, 462 (1958). The Supreme Court enforced this privilege when the government "laid no adequate foundation for its direct demands." *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 555 (1963). The Supreme Court has further clarified that corporations—including those granted government monopolies—are generally entitled to First Amendment speech protections. *See, e.g., First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 775-76 (1978) (interpreting the First Amendment's speech protections as applying to corporations); *NAACP v. Button*, 371 U.S. 415, 428-29 (1963) (analyzing First Amendment speech protections for political speech conducted through corporations); *Consol. Edison Co. of NY v. Pub. Serv. Comm'n*, 447 U.S. 530, 534 n. 1 (1980) ("Nor does Consolidated Edison's status as a privately owned but government regulated monopoly preclude its assertion of First Amendment rights.").

When First Amendment concerns arise, courts considering allegations of the government's intrusion on speech or associational rights must evaluate whether there is a compelling or substantial government interest in doing so. *See, e.g., Alabama*, 357 U.S. at 463. Arizona's specific authorizations noted above (allowing the Commission and its members to investigate PSCs' affairs in order to achieve the Commission's purposes on behalf of the public interest) will satisfy this inquiry where any request is substantially related to those purposes. *See, e.g., John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010).

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Notwithstanding this entitlement to speech protections, right-of-association privilege concerns may well be at their nadir for expenditures by those PSCs that are subject to extensive regulation in exchange for a government-imposed monopoly and rate of return. See, e.g., United States v. Hubbard, 650 F.2d 293, 306 (D.C. Cir. 1980) (identifying a corporation's individual attributes, including "the nature and purposes of the corporate entity," as determining the availability of any privacy right); Sw. Transmission Co-op., Inc. v. Ariz. Corp. Comm'n, 213 Ariz. 427, 431-32 ¶ 23 (App. 2006) ("To be a [PSC,] an entity's 'business and activities must be such as to make its rates, charges and methods of operation[] a matter of public concern, clothed with a public interest to the extent contemplated by law which subjects it to governmental control" (quoting Trico Elec. Coop., Inc. v. Corp. Comm'n, 86 Ariz. 27, 34-35 (1959)).

Courts also review exercises of agency inspection and investigation authority for reasonableness. See Carrington v. Ariz. Corp. Comm'n, 199 Ariz. 303, 305 ¶ 9 (App. 2000) (citing People ex rel. Babbitt v. Herndon, 119 Ariz. 454, 456 (1978)). The United States Supreme Court has identified a three-part test for reasonableness: "[I]t is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." United States v. Morton Salt Co., 338 U.S. 632, 652 (1950). The Morton Salt test is consistent with the first three factors Arizona courts commonly use for reasonableness in cases of Commission requests for information. See Carrington, 199 Ariz. at 305, ¶ 9, 18 P.3d at 99 (citing Herndon, 119 Ariz. at 456). Consistent with further explication by the United States Supreme Court, Arizona courts also have provided a fourth requirement: if an inquiry becomes "a tool of harassment and intimidation rather than a means to gather appropriate information, the appropriate court may intrude and stop the incursion into the constitutional liberties of the parties under investigation." Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n, 133 Ariz. 500, 507 (1982); see also United States v. Powell, 379 U.S. 48, 57-58 (1964); Carrington, 199 Ariz. at 305 ¶ 9 (stating all four factors).

While the subject matter of the questions presented may implicate these limitations, application of any potential First Amendment or reasonableness factors without specific facts and circumstances to evaluate would be speculative; thus further analysis of these issues is beyond the scope of this opinion.

Analysis

Question 1: The authority of an individual Commissioner under A.R.S. § 40-241 to gather information about a PSC and its affiliates' political contributions, lobbying, and charitable contributions.

Section 40-241 empowers the Commission or an individual Commissioner to gather information in two ways. First, the Commission, each Commissioner, and any person employed by the Commission may "at any time, inspect the accounts, books, papers and documents" of any PSC. Second, any Commissioner or Commission employee who is authorized to administer oaths may also "examine under oath, any officer, agent or employee of such [PSC] in relation to the business and affairs of the [PSC]." A.R.S. § 40-241.

Section 40-241 confers power on individual Commissioners as well as the entire Commission. The plain language of Section 40-241(A) specifically refers to not just "[t]he commission" but also "each commissioner." By using the language "each commissioner," the Legislature clearly authorized individual Commissioners to exercise the powers in this statute. *J.D. v. Hegyi*, 236 Ariz. 39, 40-41 ¶ 6 (2014) ("If the language [of a statute] is 'subject to only one reasonable meaning," [courts] apply that meaning." (citation omitted)); *see also Fields v. Elected Officials' Ret. Plan*, 234 Ariz. 214, 218 ¶ 16 (2014) (stating that "the legislature generally avoids redundancy").

The authority conferred by Section 40-241 applies to inspections of PSCs and examinations of PSC personnel; it does not extend to affiliates of PSCs. Section 40-241(A) refers to any "public service corporation," which is not defined in the Arizona Revised Statutes but in the Arizona Constitution. Ariz. Const. art. XV, § 2. Therefore, the term's interpretation

should be consistent with its constitutional definition, which does not include affiliates. See id.; Stoecker v. Brush Wellman, Inc., 194 Ariz. 448, 453 ¶ 17 (1999) ("The statute's text is read in pari materia with the constitutional provision that authorizes it.") (citation omitted)); cf. Rural/Metro Corp. v. Ariz. Corp. Comm'n, 129 Ariz. 116, 118 (1981) (noting that Article XV, Section 6 of the Arizona Constitution "does not allow the legislature to give 'public service corporation' designation to corporations not listed in Article 15, § 2"). This conclusion is bolstered by the fact that another pertinent statute specifically refers to "affiliate" separately from a PSC, even though that language was enacted after Section 40-241. See 1998 Ariz. Sess. Laws ch. 209, § 23 (2d Reg. Sess.) (amending A.R.S. § 40-202(C)(2), (C)(6)); State v. Garza Rodriguez, 164 Ariz. 107, 111 (1990) ("[W]hen determining legislative intent, court[s] may consider both prior and subsequent statutes in pari materia." (citation omitted)).

In sum, pursuant to Section 40-241, an individual Commissioner may gather information regarding a PSC's political and charitable contributions, and lobbying expenditures, by inspecting the books and records of a PSC, and examining under oath PSC personnel.

Question 2: The authority of an individual Commissioner under A.R.S. § 40-241 to investigate a PSC and its affiliates' corporate organization, operation, and structure to ensure the security and financial health of the affiliate in order to protect consumers.

Consistent with the answer to Question 1, based on the statute's plain language, Section 40-241 confers power on individual Commissioners, not just the Commission as a whole. Based on the use of the term "public service corporation," the statute empowers a Commissioner to investigate by inspecting the accounts, books, papers, and documents of a PSC, but not any affiliates. The statute also authorizes an individual Commissioner to investigate by

examining under oath officers, agents, and employees of a PSC in relation to the PSC's business and affairs. As noted in this question, such an investigation's purpose would be to ascertain any risks the affiliates create regarding the financial wellbeing or effective operation of the PSC.

Question 3: The Commission and individual Commissioners' authority under Article XV of the Arizona Constitution, Affiliated Interest Rules, and related case law to require a PSC to report information about itself or its parent, subsidiary, and other affiliated corporations relevant to the Commission's constitutional authority.

Reporting requirements pursuant to Article XV, Section 3, including the Affiliated Interest Rules.

Under Article XV, Section 3 of the Arizona Constitution, the Commission may require reports pursuant to rules that are reasonably necessary for effective ratemaking. Section 3 grants the Commission authority to "prescribe . . . just and reasonable rates" and "make reasonable rules, regulations, and orders, by which [PSCs] shall be governed in the transaction of business within the state." Ariz. Const. art. XV, § 3. The authority conferred by Section 3 (ratemaking and rulemaking) must ultimately be exercised by the Commission, not an individual Commissioner. See, e.g., Ariz. Const. art. XV, § 6 (empowering the Legislature to make rules and regulations for Commission proceedings); A.R.S. § 40-102(C) (requiring assent of a majority of Commissioners for an action or order to be "the act of the [C]ommission," or a "finding, order, or decision of the [C]ommission"). In addition, Section 3 refers to the "corporation commission." Other provisions of Article XV refer to "the several members" of the Commission, showing that the drafters knew how to confer authority on individual Commissioners and did not do so here. See Ariz. Const. art. XV, § 4; Roubos v. Miller,

214 Ariz. 416, 420 ¶ 20 (2007) (where the Legislature knows how to do something, as shown elsewhere in the statutory scheme, absence of such language indicates absence of such intent). Section 3 does not expressly address requiring reports from PSCs. However, in 1990, the Commission adopted the Affiliated Interest Rules. Woods, 171 Ariz. at 288. The rules, which apply to the largest utilities, require Commission approval of the organization or reorganization of a utility holding company and transactions between utilities and affiliates. A.A.C. R14-2-801(5), 803, 804(B). They also require that the books and records of affiliates that transact business with utilities be made available for Commission inspection to the extent necessary to audit transactions with utilities. A.A.C. R14-2-804(A). In addition, the rules require reports to the Commission of diversification plans for utilities and utility holding companies. A.A.C. R14-2-805. In Woods, the Arizona Supreme Court reviewed whether these rules were constitutional under Article XV, Section 3. See Phelps Dodge Corp., 207 Ariz, at 116 ¶ 83 (discussing Woods's approach to question of rules' constitutionality). The court upheld the rules, concluding that they were "reasonably necessary for effective ratemaking," Woods, 171 Ariz, at 294, 297. Under Woods, the Commission has authority to adopt additional reporting requirements for PSCs and affiliates under Article XV, Section 3, so long as the additional requirements are reasonably necessary for effective ratemaking. See id.

Reporting requirements under Article XV, Section 13.

Under Article XV, Section 13, the Commission, but not individual Commissioners, may require reports and information concerning the "acts and operations" of a PSC or Public Company. Because the language of Section 13 authorizes reports "as may be required by law, or by the corporation commission," the authority to require reports is not conferred on an individual Commissioner. *See also* A.R.S. § 40-204(A), (B) (vesting authority in the Commission). The

power of the Commission to require reports from companies other than PSCs under Article XV,

Section 13 was litigated in Arizona Public Service Co., 157 Ariz. 532. The court concluded that

a corporation that is not a PSC is subject to the powers set forth in this section if it is a Public

Company:

[T]he powers conferred upon the Commission to inspect and investigate under § 4

and to require reports under § 13 extend to all corporations which offer stock for

sale to the public. They do not extend to those corporations which do not do so.

Id. at 535. Therefore, this power could relate to an affiliate of a PSC only if the affiliate is a

Public Company.

Conclusion

As set forth in this opinion, the Commission, and in some instances individual

Commissioners, have the authority to gather information, inspect, and require reports related to

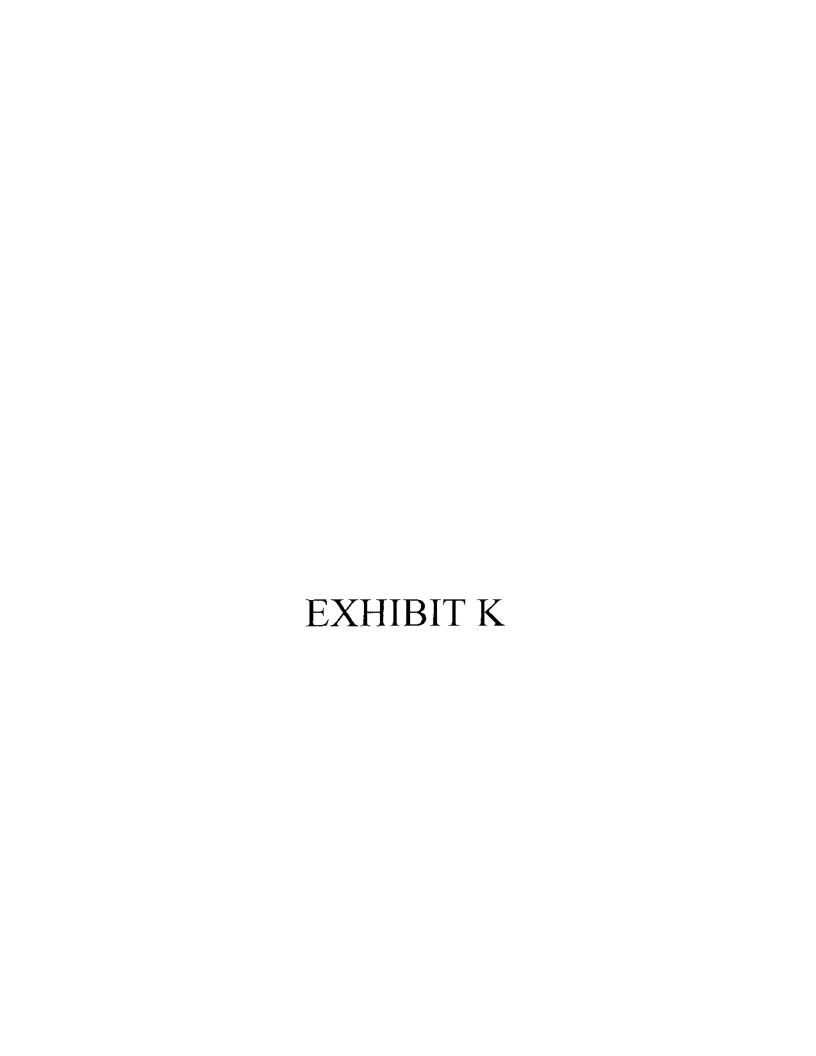
the topics specified in the questions presented, subject to fact-specific constitutional

considerations.

Mark Brnovich

Attorney General

12



Utility owner, ex-regulator, lobbyist indicted on bribery, fraud charges

Ryan Randazzo, The Republic | azcentral.com

Published 3:59 p.m. MT May 25, 2017 | Updated 9:52 p.m. MT May 30, 2017



(Photo: David Wallace/The Republic)

Corrections & clarifications: The name of U.S. Rep. Andy Biggs, R-Ariz., was misspelled in an earlier version of the video accompanying this story.

Former Chairman of the Arizona Corporation Commission Gary Pierce and water company owner George Johnson were indicted this week in federal court on charges of bribery, conspiracy and fraud.

The charges filed in U.S. District Court on Tuesday said Pierce approved higher rates for Johnson Utilities in the East Valley and Pinal County in exchange for \$31,000, which the company funneled to his wife.

Also named in the eight-count indictment were Sherry Pierce and lobbyist Jim Norton, who the indictment said "agreed to act as a conduit" between Johnson and Gary Pierce.

The indictment also describes a plan for Pierce to buy a \$350,000 land parcel with funds that actually were coming from Johnson, though the indictment does not indicate that transaction was completed.

Pierce voted in 2011 to allow a rate increase for Johnson Utilities that the staff at the Corporation Commission opposed, and he voted in 2013 for a controversial change (http://archive.azcentral.com/business/articles/2012/07/05/20120705arizona-utility-who-must-pay-taxes.html) that allowed the utility to raise customer rates to pay the personal income tax of the company owners. Both hikes were approved by majority votes of the commission.

ALLSTATE SMALL BUSINESS BAROMETER
Phoenix Passion is Driving Small Business

(http://www.azcentral.com/story/sponsor-story/allstate-small-business-barometer/2017/04/26/phoenixs-small-business-ownersget-into-zone/100849580/)

Other water companies subsequently filed for similar increases allowing the collection of their owners' income taxes through utility rates.

Norton, a managing partner at Axiom Public Affairs, wields considerable influence at the state Capitol, where he lobbies for business interests. He also has a strong personal relationship with Gov. Doug Ducey, whom he has known since college. Photos of the two appear on Norton's Facebook page.

Neither Pierce nor Norton immediately responded to The Arizona Republic's request to discuss the indictment. Johnson declined to comment.

MORE: Read the indictment (http://archive.azcentral.com/persistent/icimages/news/Johnson%20indictment.pdf)

The indictment said Norton, then working for R&R Partners, was offered the opportunity to buy land for Pierce for \$350,000, using Johnson's money.

The plan involved a co-conspirator, who was not named or indicted, who charged Johnson \$6,000 a month to act as a consultant. That co-conspirator would give Sherry Pierce simple tasks and have her submit monthly invoices of \$3,500 from November 2011 through August 2012, the indictment said.

"The purpose of this consulting arrangement was to conceal the direct payment of funds by defendant George Harry Johnson to defendant Gary Leonard Pierce," the indictment said. This was done "in order to hide the conspiracy and scheme to defraud," the indictment said.

In June 2016, the <u>Federal Bureau of Investigation said it was investigating matters involving statewide elections in 2014, and Pierce was questioned (/story/money/business/energy/2016/06/10/fbi-questions-former-utility-regulator-aps-corporation-commission/85716806/)</u> at that time.



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It was not known whether the indictments grew out of that investigation.

The indictment is another black eye for the regulatory body that sets utility rates and policies in Arizona. The commission's former chairwoman, Susan Bitter Smith, resigned amid a conflict of interest controversy in 2015 (/story/money/business/energy/2015/12/17/susan-bitter-smith-resigns-arizona-corporation-commission/77501558/). Former Chairman Bob Stump was involved in a dispute regarding text messages he deleted (/story/money/business/energy/2016/01/22/review-bob-stumps-deleted-text-messages/79179590/) and therefore couldn't be provided as part of a public-records request, and two Republicans elected in 2014 have been accused of being helped in their campaigns by the state's biggest utility. Arizona Public Service Co. (/story/money/business/energy/2015/12/01/regulator-robert-burns-wants-aps-disclose-its-dark-money-contributions-political-candidates/76592810/)

The indictment still was a surprise to some with close ties to the organization, including Paul Walker, who has represented several companies with rate cases at the commission.

"This constant stream of problems coming out of the Corporation Commission I hope raises the interest of the Legislature and governor and voters to really start to look at whether we want to continue to elect people to the Corporation Commission, or follow the lead of many states and have them appointed and confirmed by the Legislature," Walker said Thursday.

The players

Gary Pierce: Served on the Corporation Commission from 2007 to 2014, including as chairman. Also served as a majority whip of the Arizona House of Representatives and as a Yuma County supervisor. He is a former teacher and business owner. Among his more controversial votes on the commission was the 2013 decision to begin charging a special monthly fee to solar users for APS. It was among the first of such charges in the country.

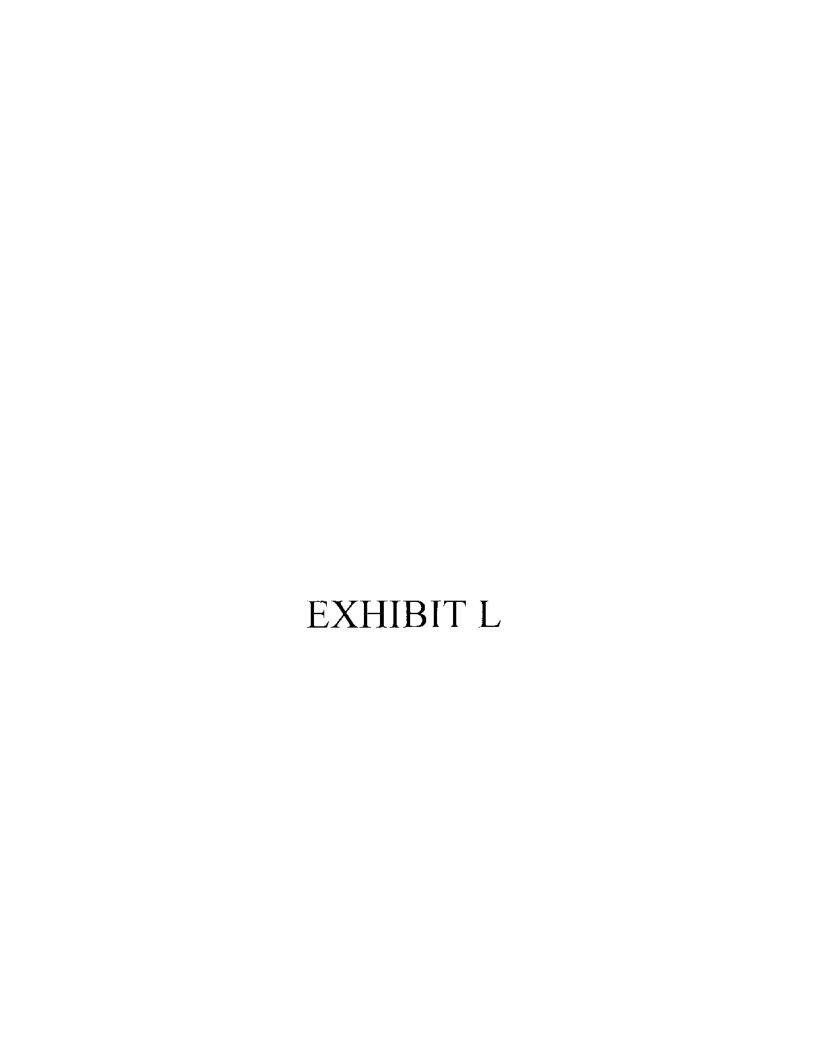
Jim Norton: The lobbyist has represented myriad clients with his current partners at Axiom Public Affairs and with R&R Partners previously. Active clients include the Arizona Chamber of Commerce and Industry, city of Phoenix, APS, Arizona Auto Dealers Association, Arizona Coyotes and Raytheon Co., according to state records.

George Johnson: The owner of Johnson Utilities has been involved in several high-profile matters considering the small size of his utility, which has about 20,000 customers. Last year state environmental regulators warned that water from his company was unsafe for infants (/story/news/local/pinal/2016/12/02/johnson-utilities-pinal-county-drinking-water-nitrate-level/94844664/). Johnson also was involved in a 2007 record settlement with the state for \$12.1 million for environmental damages. A report earlier this year said the utility ranked No. 2 in violations (/story/news/local/arizona-water/2017/05/02/arizona-drinking-water-violations-common-report-says/101169862/) among the state's 10 largest water systems with at least one violation.

Sherry Pierce: The wife of Gary Pierce has her own political connections, in addition to their son, Justin, who served as a state representative and unsuccessfully ran for secretary of state in 2014. She served as the deputy district director for former U.S. Rep. Matt Salmon and holds that same position today for U.S. Rep. Andy Biggs.

Republic reporter Yvonne Wingett Sanchez contributed to this article.

Read or Share this story: http://azc.cc/2rW0ASK



REMARKS FROM THE
THIRTIETH ANNUAL MEETING OF SHAREHOLDERS
WEDNESDAY, MAY 20, 2015

FOLLOW A LEADER



THANK YOU ALL FOR BEING HERE TODAY TO LEARN ABOUT YOUR COMPANY'S PERFORMANCE IN 2014.

Our value proposition remains compelling, and unchanged: Pinnacle West combines a solid financial foundation with superior operating performance, excellent customer satisfaction and deep community involvement. We serve an area of the country with superior long-term growth potential and a constructive regulatory climate. We are making smart investments to modernize the electricity grid, and staying at the forefront of changes taking place within our industry.

In summary, we are performing well today and ready for what's next.

I'll start with our financial performance. We achieved strong earnings, our best-ever credit ratings and a record stock price.

Our stock price, which began 2014 at \$52.92, was \$68.31 on December 31—a 29 percent improvement. Pinnacle West outperformed the S&P 1500 Electric Utility Index and the overall stock market. When our stock price hit an all-time high of \$72 earlier this year, our market capitalization reached \$8 billion.

Our stock price has come down from this record high, but we are not alone. The broad utility sector has declined, due largely to speculation about rising interest rates, which are always a headwind for utility stocks and other dividend-oriented stocks. For the third straight year, our board of directors increased our dividend, raising it by 4.85 percent to \$2.38 per share. This action demonstrates our continued confidence in our financial health and growth potential.

Arizona's economic forecasts remain positive; the reasons people want to move to our great state have not changed. We continue to anticipate healthy long-term growth for Arizona and, in turn, for APS. We are committed to exercising financial discipline as we manage costs to keep them in line with our sales growth.

Operational performance at APS again ranked among the best in our industry. It is our job to deliver safe, reliable and affordable energy to all our customers. A lot goes in to providing that power every day, and we do it as well as any in our industry. Our safety record and reliability both rank in the top quartile among our peers, and JD Power consistently ranks APS in the top five utilities in the nation for customer satisfaction.

The electricity we provide our customers comes from a diverse mix of high-performing and increasingly clean generation. Over the last two years, we have reduced our carbon emissions by more than four million tons per year. We have cut emissions of

As prepared for delivery

mercury by 61 percent, particulates by 43 percent and nitrogen oxides by 36 percent. Looking forward, we anticipate reducing the carbon intensity of our power generation by 26 percent over the next 10 years.

The heart of our generation fleet, of course, is Palo Verde Nuclear Generating Station, the nation's largest power producer of any kind for 23 years running.

Last year Palo Verde produced a site record 32.3 million megawatt-hours of electricity—something no other power plant in the United States has ever done. Every one of those megawatt-hours was carbon-free.

We are modernizing our coal fleet. We have closed three older, less efficient units at our Four Corners power plant, and we are investing in additional environmental controls on the remaining units. At our Cholla power plant, we plan to shut down one unit by the end of 2016, and stop burning coal at the other units by the mid-2020s.

We are modernizing our natural gas fleet with an upgrade of our Ocotillo power plant. We will replace two 1960s-era generators, with five state-of-the-art turbines that are cleaner, quieter and use less water. Upgrading Ocotillo is a particularly important project because it will provide critical power when needed to back up and support the continued growth of renewable energy in Arizona.

Our growing renewable portfolio reached 1,200 megawatts last year—with 875 MWs coming from solar power. We expect zero emission sources to meet more than 50 percent of our new energy needs through 2029.

Our leadership in solar was recognized again this year by the Solar Electric Power Association. APS earned the number four spot nationally for solar generation, behind three—many times larger—California utilities. We have been a fixture at the top of these lists since the organization began ranking utilities in 2007.

Earlier this year, we announced an innovative pilot program that will allow residential customers, who might not be able to purchase or lease their own rooftop systems, to "go solar." By using advanced inverters, and orienting the panels to get more solar production late in the day when our customers need it most, this initiative will provide valuable research on how to integrate the growth of distributed solar generation in a way that benefits all customers.

Another groundbreaking initiative will provide important research on how to update the century-old utility pricing model to reflect the changing way our customers use electricity.

In collaboration with the Arizona Solar Deployment Alliance, we will recruit 200 rooftop solar customers to switch to a rate that rewards them for reducing electricity use during peak periods. At the same time, these customers will be using advanced technologies to help manage their energy use such as battery storage, load management devices, and advanced thermostats.

The local solar industry will gain insights to enhance the value of their products. We will learn how new technologies and sound rate design can help our customers save money and be smarter energy consumers.

These initiatives are attracting national attention, with one trade publication commenting that they could "change the utility business model."

APS is committed to staying ahead of ever-changing consumer technologies and making sure our system is prepared for what's next. We are proud to lead the way.

Before I leave the subject, I want to address a question I hear frequently: "If everyone agrees that Arizona should be a leader in solar energy, why is the topic so controversial?"

Most solar companies work collaboratively with utilities to serve our shared customers. This includes

international companies investing in Arizona, such as Abengoa, the Spanish company that built the innovative Solana Generating Station in Gila Bend. It includes industry leaders such as First Solar, headquartered down the road in Tempe. And it includes entrepreneurial Arizona small businesses such as American Solar & Roofing, which will be an important part of our rooftop solar pilot program. Together, we recognize that solar is a growing part of America's generation mix, but it can't succeed without a modern electricity grid.

In contrast, a narrow sector of the industry, comprised of California-based rooftop solar leasing companies, rejects collaboration.

An editorial writer for the Arizona Republic described it well when he said: "...the industry is conducting political attack campaigns against its perceived opponents, the incumbent utilities, disparaging their character, and trying to damage their reputations."

Why? The writer went on to explain that an important rate decision "...was going to be made by the elected politicians on the Arizona Corporation Commission.

If the rooftop solar industry could make APS politically toxic, the commission might protect its subsidy."

In other words, the political and media controversy in Arizona over solar energy is not the byproduct of a legitimate policy disagreement. It is political theater, manufactured to confuse the issue and damage one of Arizona's largest employers.

At this point, I remind our long-time shareholders that our approach during rate cases in 2009 and 2012 was to successfully negotiate compromise agreements with stakeholders for the various interests: large businesses, environmental groups, low income advocates, consumer watchdogs and so on. Our record of constructive issue resolution is clear, and it is long.

In 2014, the solar leasing companies went a step further, supporting two candidates for the Arizona Corporation Commission on an explicitly anti-APS platform. This caused us to reevaluate how to ensure the interests of APS customers, employees, communities and shareholders are represented in the political process.

Whenever we make the decision to support a candidate or cause, we follow the laws regarding campaign contributions and disclosure. Our policy is published on our website for all to see. Today's shareholder proposal advocated for our company to voluntarily disclose more than the law requires.

We respectfully disagree with that point of view. This is not an energy issue—it is a campaign finance issue, for others to debate and decide. Our responsibility is to follow the law with honesty and integrity, and that is what we do.

We will advocate for sound policies that enable a sustainable energy future for Arizona. That means thinking big-picture, and looking long-term.

APS is committed to the long-term success of solar energy, to a modern electricity grid that enables future customer innovations, and to an updated electricity pricing model that is fair for all customers. These are the policy principles for which we advocate.

Our future and Arizona's future have been tied together for more than a century. We are one of the state's oldest and largest home-grown businesses. We are the state's largest taxpayer. We purchase more than \$1 billion of goods and services from Arizona companies. We support vital charitable causes all across our state.

Last year, our employees volunteered 147,000 hours in community service. If we placed a dollar value on their contributions, it would equal \$3.3 million. That is in addition to the \$10 million in APS charitable contributions throughout the year.

Thank you.

It is this commitment that gets APS recognized as a leader that places a high importance on giving back to the communities where we live, work and play.

I'd like to recognize a few dedicated employees who are here with us today.

Last September, I accompanied a group of APS military veterans to Washington, D.C., to accept the Freedom Award for our company. The Freedom Award is the highest honor given by the U.S. Department of Defense to civilian employers for their support of National Guard, Reserve and veteran employees.

We have a great appreciation for our nation's defenders. We value not only their sacrifices during their service in the armed forces, but also the work ethic and experience they bring to the civilian workforce.

More than 20 percent of APS's 6,500 men and women are veterans.

Will our military veterans here today please stand? Thank you for being here, and thank you again for your service to our country, our state, and this great company. You can be seated.

Before I close, I'd like to turn the focus to a woman I admire, and am grateful to have known. Earlier this year, we were saddened by the passing of our board member and friend Sue Clark-Johnson. Sue was the personification of the adage "good things come in small packages."

She was a pioneer in the newspaper industry, breaking gender barriers by becoming the first female head of the newspaper division at Gannett, and advocating early on for the newspaper industry's adoption of technology.

I'm pleased to announce that with an endowed investment of \$100,000, APS has become the founding sponsor of the Sue Clark Johnson Professorship in News Innovation at the Walter Cronkite School

of Journalism at ASU. We hope others will join us in helping Sue's forward-thinking example to live on at the Cronkite School.

I appreciate the time you've taken to be with us, and I hope you come away from today's meeting with a sense of confidence in your company's financial strength, operating performance, policy leadership and commitment to Arizona—today and into the future.



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