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Chairman Marc Spitzer
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Re: Your Letter Dated February 19, 2004 Regarding the Testimony of Douglas Smith, an Arizona Corporation Commission Witness in the Application of Arizona Public Service for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes; Docket No. E-01345A-03-0437

Dear Chairman Spitzer:

I was surprised by the content of your February 19th letter given the very early stage of the Arizona Public Service Company (APS) rate case. I think you would agree that your letter is of a somewhat different nature than what we have typically seen a Commissioner place in an open docket.

I have spent some time reflecting on whether or not to respond. I have decided to limit what I will write in the interest of allowing all parties, including our staff, to fully develop their cases without too many distractions from Commissioners. While I support Commissioner participation in dockets to ensure that our questions and issues are addressed in the record, I think each of us needs to be careful not to take things too far. I am confident that APS is capable of defending its application—an obligation that belongs to the company, not to our staff—and I look forward to the rebuttal and surrebuttal testimony as well at the hearing coming up in May.

That being said, I would like to point out that reading Mr. Douglas Smith's testimony revealed a picture that is not as extreme as I would have originally anticipated after reading your February 19th letter. I have concluded that there will be ample opportunity for the staff to modify its position on this matter in the event that it believes such adjustment is warranted. Allow me to cite a couple of examples (emphasis added):

> Staff's view is therefore that the adjustor *currently* proposed by APS would not be appropriate. *If the concern with respect to potential overrecovery can be adequately addressed, Staff would support an adjustor that includes purchased power and fuel costs.* (D. Smith Testimony, February 3, 2004, p. 4.)

> Staff believes that the Commission should not adopt an adjustor in this case *if the issues associated with load growth cannot be adequately addressed. Staff would, however, be willing to review suggestions from the Company in its rebuttal case as to how to design an adjustor that appropriately addresses the issues.* (D. Smith Testimony, February 3, 2004, p. 19)

My intention is not to debate the staff's case right now—it is far too early for that. Nor do I wish to engage in discourse that would lead anyone to believe that I am prejudging this matter. I do not want APS, Commission staff, or other parties attempting to figure out how to adapt their cases to this letter.

Instead, I want to ensure that the record is clear—a thorough reading of Mr. Smith's testimony reveals that the current staff position is not as unbalanced as one might have assumed. The testimony does, however, make it clear that our staff believes it to be the company's responsibility—not the staff's—to respond to the perceived flaws in the method and approach used, as well as to suggest solutions to those flaws that are more than just "perceived."

I am tempted to address the matter of the Commission's role in balancing the interests of a regulated business and its customers—primarily through the method of establishing just and reasonable rates—but I feel that this would not be appropriate at this time. If we need to discuss such matters, I think it would be better to do so during an open meeting or some other publicly noticed forum. Knowing the depth of understanding that you possess on so much of what appears before us, I cannot imagine that you believe the "balancing" discussion to be something other than a fairly complex matter that must be viewed through a number of different lenses including case law, practicality, the economics of monopolies and restrained competition, and consumer protection. To try to collapse the discussion into a short paragraph or quick exchange does disservice to the matter.

I will say, however, that "balance," which itself is not readily defined as a "black and white" concept, should be something that is achieved *at least* with the final vote of the Commissioners following the normal processing of a case. To argue that each stage of a case's process must be characterized by "balance" between competing business and consumer interests would be a flawed proposition, one that could possibly prevent us from achieving the best outcome. Particularly in the early stages of significant cases, I would expect there to be some positioning going on between the applicant and other parties, including our staff, that might not be seen as sufficiently balanced.

I look forward to a healthy exchange between the parties in the APS case. I will endeavor to be prepared to evaluate this matter objectively and to ultimately render a decision that I believe is just and fair.

Sincerely,

William A. Mundell, Commissioner
Arizona Corporation Commission

cc: Commissioner Jeff Hatch-Miller
Commissioner Mike Gleason
Commissioner Kristin Mayes
Docket Control
Parties of Record