

## **Addendum to Settlement Agreement**

This Addendum is to the Settlement Agreement dated May 14, 1999 (hereafter “Agreement”) between Arizona Public Service Company (“APS” or “Company”) and the various signatories to the Agreement (collectively with APS, the “Parties”). By signing this Addendum to Settlement Agreement (“Addendum”), the Parties intend to revise certain provisions of the Agreement as directed by the Arizona Corporation Commission (“Commission”) in Decision No. 61973 (October 6, 1999) (“Decision”). The Decision adopted and approved the Agreement subject to certain modifications.

### **I. Introduction and Recitals**

1. On May 14, 1999, the Parties entered into the Agreement;
2. On May 17, 1999, APS filed with the Commission a Notice of Filing Application for Approval of Settlement Agreement and Request for Procedural Order.
3. Commencing on July 14, 1999, and pursuant to a Procedural Order issued by the Hearing Division of the Commission, a full public evidentiary hearing on the Agreement was conducted.
4. On October 6, 1999, the Commission issued its Decision No. 61973 adopting and approving the Agreement as modified in the Decision.
5. The Parties now wish to enter into this Addendum to revise the Agreement as directed in the Decision.

### **II. Addendum Agreement**

1. Metering, Meter Reading, and Billing Credits
  - A. The Company’s revised unbundled rates and charges reflecting the metering, meter reading, and billing credits required by the Decision are attached hereto as Revised Exhibit A.
  - B. The revised unbundled rates and charges in Revised Exhibit A to this Addendum are substituted for the corresponding tariffs in Exhibit A to the Agreement.
  - C. Schedules A through C of Exhibit A to the Agreement are not affected by this Addendum and were adopted and approved by the Commission in the Decision as originally proposed in the Agreement.

2. Advanced Notice for Large Customers. Section 2.3 of the Agreement is replaced with and superceded by the following provision:

2.3. Customers greater than 3 MW who choose a direct access supplier must either (a) give APS one year's advance notice before being eligible to return to Standard Offer service, or (b) pay APS for all additional costs incurred as a result of the customer returning to Standard Offer service without providing APS at least one year's advance notice.

3. Deferral of Transfer Costs. Section 2.6(3) of the Agreement is replaced with and superceded by the following provision:

(3) compliance with the Electric Competition Rules or Commission-ordered programs or directives related to the implementation of the Electric Competition Rules, as they may be amended from time to time, which costs shall be recovered from all customers receiving services from APS, provided however, that no more than sixty-seven percent (67%) of the costs to transfer generation assets to an affiliate or affiliates shall be allowed to be deferred for future collection under this provision; and

4. Rate Matters. Section 2.8 of the Agreement is replaced with and superceded by the following provision:

2.8. Neither the Commission nor APS shall be prevented from seeking or authorizing a change in unbundled or Standard Offer rates prior to July 1, 2004, in the event of (a) conditions or circumstances which constitute an emergency, such as an inability to finance on reasonable terms, or (b) material changes in APS' cost of service for Commission-regulated services resulting from federal, tribal, state or local laws, regulatory requirements, judicial decisions, actions or orders. Except for the changes otherwise specifically contemplated by this Agreement, unbundled and Standard Offer rates shall remain unchanged until at least July 1, 2004.

5. Generation Affiliate. Section 4.1 of the Agreement is replaced with and superceded by the following provisions:

4.1. Affiliates.

- (1) The Commission will approve the formation of an affiliate or affiliates of APS to acquire at book value the competitive services and assets as currently required by the Electric Competition Rules. In order to facilitate the separation of such assets efficiently and at the lowest possible cost, the Commission shall grant APS a two-year extension of time until December 31, 2002, to accomplish such separation. A similar two-year extension shall be authorized for compliance with A.A.C. R14-2-1606(B).
- (2) The affiliate or affiliates formed under this Section 4.1 shall be direct subsidiaries of Pinnacle West Capital Corporation, and not APS.
- (3) After the extensions granted in this Section 4.1 have expired, APS shall procure generation for Standard Offer customers from the competitive market as provided for in the Electric Competition Rules. An affiliated generation company formed pursuant to this Section 4.1 may competitively bid for APS' Standard Offer load, but enjoys no automatic privilege outside of the market bid on account of its affiliation with APS.

6. Statutory Waivers. Section 4.3 of the Agreement is deleted in its entirety.

7. Waivers of Affiliate Interest Rules. The Revised Exhibit D to this Addendum setting forth the Affiliate Rules Waivers is substituted for the corresponding Exhibit D to the Agreement so that the proposed waiver of R14-2-804(A) in the Agreement is deleted.

8. Conflicts with Electric Competition Rules. In reliance upon the Commission's directive in Decision No. 61973 (page 9) that "We want to make it clear that the Commission does not intend to revisit the stranded cost portion of the Agreement. It is also not the Commission's intent to undermine the benefits that parties have bargained for," Section 7.1 is replaced with and superseded by the following provision:

7.1. Approval of this Agreement by the Commission shall constitute a waiver of any existing Commission order, rule or regulation to the extent necessary to permit performance of the Agreement, as approved by the Commission. Any future Commission order, rule or regulation shall be construed and administered, insofar as possible, in a manner so as not to conflict with the specific provisions of this Agreement, as approved by the Commission. In the event any of the Parties deems a future Commission order, rule or regulation to be inconsistent with the specific provisions of this Agreement, a waiver of the new Commission order, rule or regulation shall be sought.

Nothing in this Agreement is intended to otherwise interfere with the Commission's ability to exercise its regulatory authority by the issuance of orders, rules or regulations. The requirements of this Agreement shall be performed in accordance with the Commission's Electric Competition Rules including any specific waivers granted by the Commission's order approving this Agreement, except where a specific provision of this Agreement would excuse compliance.

9. Interim Code of Conduct. Section 7.7 of the Agreement is replaced with and superseded by the following provision:

7.7. Within thirty (30) days of the date of the Commission decision approving this Agreement pursuant to Section 6.1, APS shall file an initial proposed Code of Conduct to address inter-affiliate relationships involving APS as a utility distribution company as required by the Electric Competition Rules and which includes provisions to govern the supply of generation during the two-year extension provided for by Section 4.1 of this Agreement. Interested parties may provide APS with comments on the initial proposed Code of Conduct within sixty (60) days of the date of the Commission decision approving this Agreement. APS will file a final proposed Code of Conduct for Commission approval within ninety (90) days of the date of the Commission decision approving this Agreement. Until the Commission approves a Code of Conduct for APS, APS will voluntarily comply with the initial proposed Code of Conduct or, once filed, the final proposed Code of Conduct.

10. Effect of Addendum. Other than as specifically modified by this Addendum, all provisions of the Agreement remain in full force and effect.

**AGREED TO AS OF \_\_\_\_\_, 1999:**

RESIDENTIAL UTILITY  
CONSUMER OFFICE

ARIZONA PUBLIC SERVICE COMPANY

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

ARIZONA COMMUNITY ACTION  
ASSOCIATION

(Party)

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

ARIZONANS FOR ELECTRIC CHOICE  
AND COMPETITION, a coalition of  
companies and associations in support of  
competition that includes Cable Systems  
International, BHP Copper, Motorola,  
Chemical Lime, Intel, Hughes, Honeywell,  
Allied Signal, Cyprus Climax Metals, Asarco,  
Phelps Dodge, Homebuilders of  
Central Arizona, Arizona Mining Industry  
Gets Our Support, Arizona Food Marketing  
Alliance, Arizona Association of Industries,  
Arizona Multi-housing Association, Arizona  
Rock Products Association, Arizona Restaurant  
Association, Arizona Retailers Association,  
Boeing, Arizona School Board Association,  
National Federation of Independent Business,  
Arizona Hospital Association, Lockheed Martin,  
Abbot Labs and Raytheon.

(Party)

By \_\_\_\_\_

Title \_\_\_\_\_

(Party)

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**Revised**  
**EXHIBIT D**  
**Affiliate Rules Waivers**

R14-2-801(5) and R14-2-803, such that the term “reorganization” does not include, and no Commission approval is required for, corporate restructuring that does not directly involve the utility distribution company (“UDC”) in the holding company. For example, the holding company may reorganize, form, buy or sell non-UDC affiliates, acquire or divest interests in non-UDC affiliates, etc., without Commission approval.

R14-2-805(A) shall apply only to the UDC

R14-2-805(A)(2)

R14-2-805(A)(6)

R14-2-805(A)(9), (10), and (11)

**Recision of Prior Commission Orders**

Section X.C of the “Cogeneration and Small Power Production Policy” attached to Decision No. 52345 (July 27, 1981) regarding reporting requirements for cogeneration information.

Decision No. 55118 (July 24, 1986) - Page 15, Lines 5-1/2 through 13-1/2; Finding of Fact No. 24 relating to reporting requirements under the abolished PPFAC.

Decision No. 55818 (December 14, 1987) in its entirety. This decision related to APS Schedule 9 (Industrial Development Rate) which was terminated by the Commission in Decision No. 59329 (October 11, 1995).

9th and 10th Ordering Paragraphs of Decision No. 56450 (April 13, 1989) regarding reporting requirements under the abolished PPFAC.