



PINNACLE WEST  
CAPITAL CORPORATION

**LAW DEPARTMENT**

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September 5, 2008

By email to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. S7-18-08

Dear Sir or Madam:

Arizona Public Service Company (“APS”) appreciates the opportunity to comment on the proposed rule amendments (“proposed rule changes”) to the eligibility requirements for the use of Form S-3 under the Securities Act of 1933, as amended (the “Securities Act”), proposed by the Securities and Exchange Commission (“SEC”) in SEC Release Nos. 33-8940 and 34-58071 (File No. S7-18-08). As further explained below, if the proposed rule changes are adopted, APS standing alone would no longer be able to satisfy the requirements for use of Form S-3. APS is aware that the Edison Electric Institute (“EEI”) is also submitting a comment letter on the proposed rule changes. APS is a member of EEI and agrees with the comments in that letter. By this letter, we explain in more detail the expected impact of the proposed rule changes on APS and respectfully request the SEC to further consider the proposed rule changes as they apply to wholly-owned subsidiaries of parent companies, when the parent company is primarily known and followed because of the affected subsidiary.

APS is Arizona’s largest electric utility and is a vertically-integrated electric utility that provides retail and 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. APS was incorporated in 1920 under the laws of the State of Arizona and currently has approximately 1.1 million customers. As a public service corporation, APS’ retail rates are regulated by the Arizona Corporation Commission (the “ACC”). By law, rates must be set so as to allow APS to earn a reasonable rate of return on its equity. The ACC must also approve the issuance of APS’ debt securities. Such oversight and regulation represents a layer of protection that most investors in corporate debt do not have.

Pinnacle West Capital Corporation (“Pinnacle West”) was incorporated in 1985 as the parent company of APS. Pinnacle West owns all of the outstanding capital stock of APS. Although Pinnacle West also holds other subsidiaries, APS is by far its major subsidiary. As reflected in the combined Form 10-K Report for the year ended December 31, 2007, APS’ 2007 earnings constituted more than 92% of Pinnacle West’s 2007 earnings and APS’ assets constituted more than 90% of Pinnacle West’s assets at December 31, 2007. Both APS and Pinnacle West are reporting companies under the Securities Exchange Act of 1934, as amended (the “1934 Act”). Pinnacle West is a Large Accelerated Filer, as defined in Rule 12b-2 of the 1934 Act, and a Well-Known Seasoned Issuer, as defined in Rule 405 of the Securities Act.

Although APS meets the registrant requirements set out in General Instruction I.A of Form S-3, it is a wholly-owned subsidiary of Pinnacle West and has no public equity float. Thus, it does not meet the condition in General Instruction I.B.1 for filing on Form S-3. Nonetheless, APS’ debt is rated investment grade, and APS is able to utilize Form S-3 for the issuance of its public debt in reliance on General Instruction I.B.2 of Form S-3. APS has not issued \$1 billion of registered public debt in the past three years and, therefore, is not itself a Well-Known Seasoned Issuer. Consequently, it would also not satisfy the test in the proposed rule changes to replace the current investment grade debt condition for use of Form S-3.

APS’ service territory has historically been among the fastest growing in the nation, which necessitates a large capital expenditure program and additional debt financings. If APS were unable to use Form S-3 for its public debt, APS would be severely restricted in its ability to plan its debt issuances so as to take advantage of favorable market conditions. APS believes that, as a result, its interest rates and debt issuance costs would increase and adversely impact not only the investors in Pinnacle West stock, but also APS’ electric customers. Although APS may be able to continue to use Form S-3 if Pinnacle West were to guarantee its debt securities, such a guarantee would add a layer of unnecessary complexity, time and expense without any commensurate value. Pinnacle West debt securities are rated the same or lower than APS debt securities and, therefore, the sole purpose of any such guarantee would be to allow the use of Form S-3.

We understand that a primary concern of the SEC is to allow the use of Form S-3 by companies with a wide following in the marketplace. However, the proposed rule changes appear essentially to limit use of Form S-3 by subsidiary companies in a holding company structure to those which are Well-Known Seasoned Issuers standing alone. We believe that in many such cases, where the parent company is a Well-Known Seasoned Issuer based on public float, it is widely followed due primarily to its subsidiary company. As APS is Pinnacle West’s primary subsidiary, investors in Pinnacle West stock follow and understand APS’ debt, and APS has at least as wide a following in the marketplace as does Pinnacle West.

APS respectfully requests that the SEC reconsider its proposed rule changes as they apply to significant subsidiaries of utility or other holding companies where there is reason to believe that the primary following of the parent is due to the subsidiary. APS believes that in such cases, the subsidiary should be allowed to file on Form S-3 at least to the same extent as the parent, even without a specific parental guarantee.

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Thank you for your consideration of these issues.

Very truly yours,

/s/ Shirley Baum

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(For Arizona Public Service Company)