

COVER SHEET



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ARIZONA CORPORATION COMMISSIC  
DOCKET CONTROL CENTER

AZ CORP COMMISSION

JUN 23 2000

CASE/COMPANY NAME:

In the matter of the Application of Panda Gila River, L.P. or their assignee(s), in conformance with the requirements of Arizona Revised Statutes 40-360.03 and 40-360.06, for a Certificate of Environmental Compatibility authorizing the construction of natural gas-fired, combined cycle generating plant, switchyard, and related facilities in the Town of Gila Bend, Maricopa County, Arizona, located in Sections 8, 17, 20, and 21, Township 5 South, Range 4 West, Gila and Salt River Base and Meridian.

Jun 23 10 28 AM '00  
CASE NO. 99 DOCKETED BY [Signature]  
DOCKET NO. L-00000Q-00-0099

DOCUMENT CONTROL

NATURE OF ACTION OR DESCRIPTION OF DOCUMENT Please mark the item that describes the nature of the case/filing:

01 NEW APPLICATIONS

- NEW CC&N
- RATES
- INTERIM RATES
- CANCELOATION OF CC&N
- DELETION OF CC&N TERRITORY
- EXTENSION OF CC&N (TERRITORY)
- TARIFF-NEW (NEXT OPEN MEETING)
- REQUEST FOR ARBITRATION  
(Telecommunication Act)
- FULLY OR PARTIALLY ARBITRATED  
INTERCONNECTION AGREEMENT  
(Telecom. Act)
- VOLUNTARY INTERCONNECTION  
AGREEMENT (Telecom. Act)

- MAIN EXTENSION
- CONTRACT/AGREEMENTS
- COMPLAINT (Formal)
- RULE VARIANCE/WAIVER REQUEST
- SITING COMMITTEE CASE
- SMALL WATER COMPANY-SURCHARGE (Senate Bill 1252)
- NOTICE OF OPPORTUNITY
- SALE OF ASSETS & TRANSFER OF OWNERSHP
- SALE OF ASSETS & CANCELLATION OF CC&N
- FUEL ADJUSTER/PGA in compliance with Dec. 61009
- MERGER
- FINANCING
- MISCELLANEOUS  
Specify \_\_\_\_\_  
DOCKET NO. \_\_\_\_\_

02 REVISIONS/AMENDMENTS TO  
PENDING OR APPROVED MATTERS

APPLICATION  
COMPANY \_\_\_\_\_  
DOCKET NOS. \_\_\_\_\_

TARIFF  
 PROMOTIONAL  
DECISION NO. \_\_\_\_\_  
DOCKET NO. \_\_\_\_\_  
 COMPLIANCE  
DECISION NO. \_\_\_\_\_  
DOCKET NO. \_\_\_\_\_

MISCELLANEOUS FILINGS

- 04 AFFIDAVIT
- 12 EXCEPTION
- 18 REQUEST FOR INTERVENTION
- 48 REQUEST FOR HEARING
- 24 OPPOSITION
- 50 COMPLIANCE ITEM FOR APPROVAL

- 29 STIPULATION
- 38 NOTICE OF INTENT  
(Only notification of future action/no action necessary)
- 43 PETITION
- 46 NOTICE OF LIMITED APPEARANCE
- 39 OTHER  
Specify \_\_\_\_\_ APPLICANT'S OPPOSITION TO CENTER  
FOR LAW IN THE PUBLIC INTEREST'S REQUEST FOR  
REVIEW OF SITING COMMITTEE'S DECISION  
DOCKET NO. L-00000Q-00-0099

Date: June 22, 2000

23

C. Webb Crockett/Karen E. Errant, Fennemore Craig, P.C.  
Print Name of Applicant/Company/Contact Person

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AZ CORP COMMISSION

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DOCUMENT CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

7 In the matter of the Application of Panda  
8 Gila River, L.P. or their assignee(s), in  
9 conformance with the requirements of  
10 Arizona Revised Statutes 40-360.03 and  
11 40-360.06, for a Certificate of  
12 Environmental Compatibility authorizing  
13 the construction of natural gas-fired,  
14 combined cycle generating plant,  
15 switchyard, and related facilities in the  
16 Town of Gila Bend, Maricopa County,  
17 Arizona, located in Sections 8, 17, 20, and  
18 21, Township 5 South, Range 4 West, Gila  
19 and Salt River Base and Meridian.

CASE NO. 99  
DOCKET NO. L-00000Q-00-0099

APPLICANT'S RESPONSE TO CENTER FOR  
LAW IN THE PUBLIC INTEREST'S REQUEST  
FOR REVIEW OF SITING COMMITTEE'S  
DECISION

16 The Arizona Center for Law in the Public Interest ("Center") has requested the Arizona  
17 Corporation Commission's ("Commission") review of the Power Plant and Transmission Line  
18 Siting Committee's ("Committee") decision to grant Panda Gila River, L.P. ("Panda") a  
19 Certificate of Environmental Compatibility ("CEC") for construction and operation of a natural  
20 gas-fired, combined-cycle electric generating plant ("Panda Project"). The Center raises two  
21 basic issues (1) that the record does not contain sufficient evidence to demonstrate the need for  
22 the Panda Project; and (2) that the process for issuing a CEC should be modified.

23 **I. Panda is Not Required to Demonstrate a Need for the Panda Project**

24 The Center erroneously contends that the balancing test set forth in A.R.S. § 40-360.07.B.  
25 requires Panda to demonstrate the need for the Panda Gila River Project. This simply is not true.  
26 Neither the statutes or Commission rules governing the CEC process, require an applicant to

1 justify the need for its project. The factors to be considered by the Committee when considering  
2 an application are listed in A.R.S. § 40-360.06. In turn, these factors are addressed by the  
3 applicant in order to assist the Committee in making its determination. However, none of the  
4 listed items pertain to the need for the plant. As to the one issue that is relevant, the  
5 environmental impact of the Panda Project, the Center acknowledges that "an abundance of  
6 evidence [was] submitted to the Committee." Center Request at 1.

7         Assuming *arguendo* that Panda is required to demonstrate the need for new generating  
8 capacity, Panda has more than adequately made that demonstration. The record contains  
9 substantial evidence concerning the need for the Panda Project. Panda witness, Jennifer Tripp,  
10 testified extensively concerning the generation deficiency in the Phoenix and Tucson load  
11 pockets. Hearing Transcript, p. 55-59. Further, Ms. Tripp testified concerning the need to locate  
12 additional generation within the Phoenix and Tucson load pockets in order to minimize  
13 transmission constraints and ensure reliability of the transmission grid. Hearing Transcript, p.  
14 52-55.

15         Most importantly, Ms. Tripp addressed the Center's primary concern: the need for the  
16 Panda Project in relation to other generating plants planned for Arizona. Hearing Transcript, p.  
17 57-59. Ms. Tripp testified that assuming all of the planned generation comes on line and that old  
18 generation will retire, there will still be a deficiency in generation. Hearing Transcript, P. 58:1-  
19 14. Consequently, Ms. Tripp concluded that:

20                 The 2,080 megawatt Panda Gila River Project integrates into the  
21 system in the Phoenix load pocket and fills a need. Additionally,  
22 when it integrates in 2002, it reduces the Phoenix load pocket  
23 deficiency, a deficiency which continues to increase even with the  
24 planned units in later years. Not only does the project fill a  
25 generation need, but in coordination with the planned transmission  
26 system improvements, the project and new 500kV transmission  
facilities to be constructed in conjunction with the project will  
significantly strengthen the transmission system. Hearing  
Transcript, p. 59:12-24.

1 Through Ms. Tripp's testimony, Panda has clearly demonstrated the need for the Panda  
2 Project. Ms. Tripp's testimony was not refuted or called into question by any other party.  
3 Therefore, there are absolutely no grounds for the Center to urge the Commission to deny  
4 Panda's application.

5 Additionally, the balancing test assumes the Commission's knowledge of the need for  
6 additional generation. Such assumption is entirely reasonable given the fact that the Commission  
7 is extensively involved in the deregulation of electric generation in Arizona. In order to comply  
8 with A.R.S. § 40-360.06, the Commission must balance the need for an adequate, economical  
9 and reliable supply of energy against the desire to minimize environmental impacts from the  
10 project. The Commission is well aware of the need for additional generation. As to the  
11 environmental impacts from the Panda Project, the Center has acknowledged that there "was an  
12 abundance of evidence submitted to the Committee regarding the environmental impacts of the  
13 Panda Gila Plant." The evidence submitted to the Committee clearly demonstrated that the  
14 Panda Project is environmentally compatible based on a review of the factors set forth in A.R.S.  
15 § 40-360.06. Hence, the Commission can make the necessary determination in order to comply  
16 with A.R.S. § 40-360.07.B.

17 Just one example of the Commission's active involvement in ensuring adequate  
18 generation is the Commission's Electric Industry Summer Peak 2000 Preparedness Workshop  
19 held May 17, 2000. During the workshop the Commissioners solicited testimony concerning the  
20 projected generation demand and supply. In response, Commission Staff testified to the need for  
21 the planned generation plants in order to meet the increasing demand. As this example  
22 illustrates, the Commission is sufficiently informed concerning the need for additional  
23 generation.

24 Additionally, the Center's claim that the balancing test requires Panda to demonstrate the  
25 need for the plant is incompatible with the basic concept of deregulation. The Legislature has  
26 declared that it is the public policy of the State that a competitive market shall exist in the sale of

1 electric generation service. A.R.S. § 40-202.B. The Commission has also determined that  
2 competition in electric generation is in the public interest. In furtherance of the stated policy the  
3 Commission has enacted rules and issued competitive CC&Ns. However, a vital piece of  
4 competition is the construction of competitive electric generation facilities. Therefore, the CEC  
5 process should not be interpreted in such a manner as to interfere with the more recently enacted  
6 policy of the State implementing competition.

7 Further, in a competitive market, the decision to build or not build electric generation  
8 capacity is driven by the market and not by the government. Therefore, in a competitive market  
9 it is the electric generation provider's determination of need and the existence of a demand for  
10 additional capacity that determines whether it will build a plant. Consequently, the CEC process  
11 should not be construed to interfere with the introduction of competition.

## 12 **II. The Center May Not Expand the Scope of the CEC Process Through its Request**

13 The Center's major point of contention is simply that it does not like the process for  
14 siting generation plants created by the Legislature. The bulk of the Center's request is devoted to  
15 its concern that the power generated from the Panda Project and other planned generation plants  
16 may be sold outside of Arizona. Additionally, the Center advocates for a "more rational process"  
17 for issuing CECs. In this regard the Center lists various factors it believes should be addressed in  
18 a CEC application. Although the Center may wish to lobby the Legislature to amend the CEC  
19 process, the Center's complaints have no place in a proceeding for a CEC.

20 In addition, the Center's claim that the Commission should engage in greater planning for  
21 planned power plants is contrary to the direction of the Legislature. A review of the CEC  
22 statutes shows that the Legislature has actually diminished oversight of electric generation. Such  
23 action is, however, consistent with the policy of the State to implement competition. Prior to a  
24 1998 statutory change, persons contemplating construction of electric generation facilities were  
25 required to file a ten year plan with the Commission detailing the proposed facilities. A.R.S. §  
26 40-360.02 as added by Law 1971, Ch. 67 § 2. The Commission could compile the various plans

1 and engage in the planning of electric generation as set forth in the statute. However, in 1998 the  
2 Legislature amended A.R.S. § 40-360.02 to limit its scope to the construction of transmission  
3 lines. Therefore, the Center's claim that the Commission should be increasing the scope of its  
4 review and planning is directly contrary to the direction of the Legislature.

5 **III. The Center Did Not Participate In the CEC Process**

6 The Center requests that the CEC be corrected to reflect its status as a party. Panda has  
7 no objection to making the requested change. However, Panda believes that it is inappropriate  
8 for the Center to raise its concerns for the first time at this juncture. Although the Center filed its  
9 notice of intent to become a party, the Center never became a party in any meaningful manner.  
10 The Center did not participate in the hearing, file objections to Panda's application, or ask the  
11 Committee to address any of the Center's concerns.

12 Instead, the Center sat quietly while Panda made its record before the Committee. Then,  
13 only after the Committee granted the CEC, did the Center voice its concerns over the CEC  
14 process. To the extent the Center believes that the CEC process is a legitimate forum for its  
15 concerns, it waived its right to have those concerns addressed by not participating in the process  
16 so that Panda would have the opportunity to respond. The Center found it easier not to raise its  
17 concerns and wait to object until after the process is essentially over. Consequently, the Center  
18 should not be allowed to delay Panda's CEC at this late date.

19 **IV. Conclusion**

20 As the record clearly demonstrates, the Panda Project will have no significant  
21 environmental impacts. Further, although not required, Panda has demonstrated the need for the  
22 Panda Project. Therefore, the Commission should approve the CEC as granted by the  
23 Committee.

24 RESPECTFULLY SUBMITTED this 23rd day of June, 2000.

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