

ORIGINAL INTE



0000000740

RECEIVED

2003 OCT 31 A 11: 22

AZ CORP COMMISSION  
DOCUMENT CONTROL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STOEL RIVES LLP  
James M. Van Nostrand  
Katherine A. McDowell  
George M. Galloway  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 224-3380  
  
S. David Childers, Esq. #004538  
Christy C. Brown, Esq. # 0017968  
Tasha N. Cycholl, Esq. #019727  
LOW & CHILDERS, P.C.  
2999 North 44th Street, Suite 250  
Phoenix, AZ 85018  
Telephone: (602) 266-1166  
Attorneys for Arizona Competitive Power Alliance

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTEN K. MAYES

Arizona Corporation Commission

**DOCKETED**

OCT 31 2003

DOCKETED BY *CR*

DOCKET NO. E-01345A-03-0437

**APPLICATION FOR LEAVE TO INTERVENE**

IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR A HEARING TO  
DETERMINE THE FAIR VALUE OF THE  
UTILITY PROPERTY OF THE COMPNAY  
FOR RATEMAKING PURPOSES, TO FIX A  
JUST AND REASONABLE RATE OF  
RETURN THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN, AND FOR APPROVAL OF  
PURCHASED POWER CONTRCT

**APPLICATION OF THE ARIZONA COMPETITIVE POWER ALLIANCE FOR  
LEAVE TO INTERVENE**

Pursuant to A.A.C. R14-3-105, the Arizona Competitive Power Alliance (the  
“Alliance”) hereby makes application for leave to intervene in the above-captioned  
proceeding.

**LOW & CHILDERS, P.C.**  
ATTORNEYS AT LAW

2999 North 44th Street, Suite 250 • Phoenix, Arizona 85018

1 The Alliance is an association of independent power producers dedicated to  
2 meeting Arizona’s wholesale electric power needs. Members of the Alliance are:  
3 Calpine, Constellation New Energy, Duke Energy North America, LLC, TECO Power  
4 Services Corporation, PG&E National Energy Group, PPL Montana, LLC, Reliant  
5 Energy, Sempra Energy Resources, Shell Trading, and Southwestern Power Group II,  
6 LLC. Alliance members or their affiliates own and operate over 7000 megawatts of  
7 Arizona-based generation, with another 1,000 MW under development.  
8

9 As suppliers of electricity in Arizona’s competitive wholesale market, Alliance  
10 members will be directly and substantially affected by the decision of the Commission  
11 in this proceeding. The granting of intervenor status to the Alliance will not unduly  
12 delay the proceeding or cause the issues to be unduly broadened.  
13

14 With respect to the Alliance’s position on issues in this proceeding, the Alliance  
15 anticipates that it will (i) oppose the proposal of Arizona Public Service Company  
16 (“APS”) to transfer certain Pinnacle West Energy Corporation (“PWEC”)<sup>1</sup> merchant  
17 generating assets into APS’s jurisdictional rate base at cost-of-service, and (ii) carefully  
18 evaluate, and oppose if necessary, any other proposals of APS in this proceeding that  
19 could obstruct or undercut the Commission’s ongoing effort to facilitate a competitive  
20 wholesale electric market in Arizona. In this regard, the Alliance believes that the  
21 proposed transfer of PWEC merchant generating assets:  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Pinnacle West Energy Corporation and APS are both subsidiaries of Pinnacle West Capital Corporation.

- 1 ● Is inconsistent with the public interest, as the APS testimony itself demonstrates
- 2 that including these merchant generating assets in the APS rate base imposes
- 3 unacceptable and avoidable rate impacts on APS's retail customers;
- 4 ● Is unnecessary, given that the output from the PWEC merchant generating assets
- 5 is already committed to serve APS's retail customers during the summer peak
- 6 periods through 2006 under terms far more favorable to APS's retail customers
- 7 than if the assets were included in rate base;
- 8 ● Defeats the Commission's stated goal of "encouraging the development of a
- 9 robustly competitive wholesale generation market in Arizona,"<sup>2</sup> as inclusion of
- 10 the PWEC merchant generating assets in the APS rate base would virtually
- 11 eliminate any need for APS to make purchases in the wholesale market in the
- 12 near term and thus deal a crippling blow to the ongoing transitional development
- 13 of that competitive market;
- 14 ● Is based upon an incorrectly defined and inadequate prudence analysis: Rather
- 15 than demonstrating the prudence of the instant transaction – *i.e.*, transferring the
- 16 merchant generating assets to APS at net book cost – the prudence analysis
- 17 offered by APS evaluates a fictional scenario which assumes that the merchant
- 18 generating units (1) were built by APS (when in fact they were built by PWEC),
- 19 and (2) were built solely to serve APS loads (when in fact they were not);
- 20 ● Relies upon a faulty "regulatory compact" analysis, based on the same incorrect
- 21 assumption that the PWEC merchant generating assets were built solely to serve
- 22 APS's retail loads;
- 23 ● Improperly subsidizes the shareholders of Pinnacle West Capital Corporation
- 24 ("PWCC"), at the expense of APS's retail customers, inasmuch as the market
- 25
- 26

27 <sup>2</sup> Decision No. 65743, "Final Track B Order," Docket No. E-00000A-02-0051 et al.,  
28 issued March 14, 2003, at p. 15.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

value of the PWEC merchant generating assets is considerably less than the net book value at which the assets are proposed to be transferred; and

- Is not supported by any APS showing in this proceeding, based upon a demonstrated need through a filed integrated resource plan or other evaluation of market opportunities, that (1) APS requires ownership of any new resources, or (2) the PWEC merchant generating assets represent the least-cost solution for APS's retail customers.

The Alliance requests that all communications in connection with the above-captioned proceedings be directed to:

James M. Van Nostrand  
STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 294-9679

S. David Childers  
LOW & CHILDERS, P.C.  
2999 North 44<sup>th</sup> Street, Suite 250  
Phoenix, AZ 85018  
Telephone: (602) 266-1166

Greg Patterson, Executive Director  
Arizona Competitive Power Alliance  
916 West Adams Suite 3  
Phoenix, AZ 85007  
Telephone: 602-369-4368

For reasons discussed above, the Alliance respectfully requests that it be granted leave to intervene in these proceedings, and that the Alliance be accorded the full status of an intervenor under the Commission's rules and regulations.

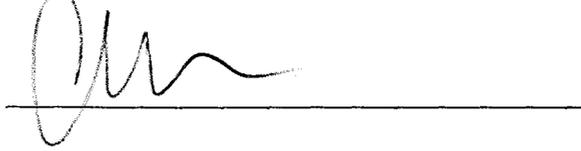
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RESPECTFULLY SUBMITTED this 31 day of October, 2003

By:

STOEL RIVES LLP  
James M. Van Nostrand  
Katherine A. McDowell  
George M. Galloway  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 224-3380

LOW & CHILDERS, P.C.  
S. David Childers  
2999 North 44<sup>th</sup> Street, Suite 250  
Phoenix, AZ 85018  
Telephone: (602) 266-1166



ORIGINAL and 13 copies of the  
foregoing hand-delivered for filing  
this 31<sup>st</sup> day of October, 2003 to:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered  
This 31<sup>st</sup> day of October, 2003, to:

Lyn Farmer, Chief Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel  
ARIZONA CORPORATION COMMISSION  
Legal Division  
1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson  
Director, Utilities Division  
ARIZONA CORPORATION COMMISSION  
Legal Division

1 1200 West Washington Street  
Phoenix, AZ 85007

2 COPY of the foregoing mailed this  
3 \_\_\_ day of October, 2003, to:

4 Thomas L. Mumaw  
5 Karilee S. Ramalay  
6 Pinnacle West Capital Corporation  
7 PO Box 53999 MS 8695  
Phoenix, AZ 85072-3999

8 Jeffrey B. Guldner  
9 Faraq Sanei  
10 Snell & Wilmer  
11 One Arizona Center  
12 400 East Van Buren Street  
Phoenix, AZ 85004-2202  
Attorneys for Arizona Public Service Company

13 C. Webb Crockett  
14 Fennemore Craig  
15 3003 N. Central Avenue  
16 Suite 2600  
Phoenix, AZ 85012  
Attorneys for AECC and Phelps Dodge

17 Major Allen G. Erickson  
18 AFCEA A/ULT  
19 139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403-5319  
Attorney for FEA

20 Michael L. Kurtz  
21 Boehm, Kurtz & Lowry  
22 36 E. Seventh Street, Suite 2110  
Cincinnati, OH 45202  
Attorneys for Kroger Company

23 Scott Wakefield  
24 RUCO  
25 1110 W. Washington Street  
26 Suite 220  
Phoenix, AZ 85007

27 Walter W. Meek  
28 AUIA

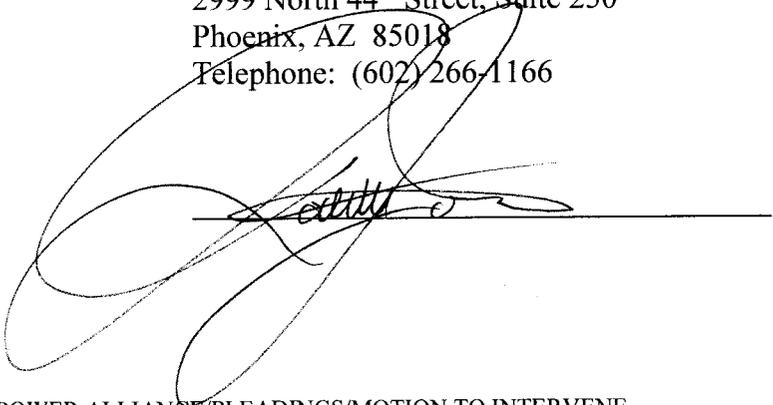
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2100 N. Central Avenue  
Suite 210  
Phoenix, AZ 85067

Arizona Reporting Service, Inc.  
2627 N. Third Street, Suite 3  
Phoenix, AZ 85004-1103

DATED: October 31<sup>st</sup>, 2003.

LOW & CHILDERS, P.C.  
S. David Childers  
2999 North 44<sup>th</sup> Street, Suite 250  
Phoenix, AZ 85018  
Telephone: (602) 266-1166



SECY 4/ARIZONA COMPETITIVE POWER ALLIANCE/PLEADINGS/MOTION TO INTERVENE