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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

SEP 27 2004

5 Attorneys for Panda Gila River, L.P.

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BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE APPLICATION
8 OF ARIZONA PUBLIC SERVICE
9 COMPANY FOR A HEARING TO
10 DETERMINE THE FAIR VALUE OF THE
11 UTILITY PROPERTY OF THE COMPANY
12 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 CONTRACT

DOCKET NO. E-01345A-03-0437

**STATEMENT OF POSITION OF PANDA
GILA RIVER, L.P.**

13 On June 27, 2003, Arizona Public Service Company ("APS") filed with the Arizona
14 Corporation Commission ("Commission") an application for a 9.8% (\$175 million) rate increase and
15 for approval of a purchased power contract with its affiliate, Pinnacle West Energy Corporation
16 ("PWEC"). By order issued April 29, 2004, the procedural schedule in this docket was temporarily
17 stayed to allow for settlement discussion and, on August 18, 2004, a Proposed Settlement Agreement
18 ("Agreement") was filed with the Commission which, among other things, provides for APS to
19 acquire approximately 1800 MW of PWEC's generation. By its order issued August 20, 2004, the
20 Commission required non-signatories to file a statement of position on the merits of the Agreement
21 by September 27, 2004. Pursuant to such directive, Panda Gila River, L.P. ("Gila River") submits
22 this Statement of Position.

SUMMARY

24 Gila River does not believe it has been demonstrated that an affiliate asset acquisition by
25 APS of the PWEC assets is APS' least cost long-term power supply alternative, and consequently, it
26 has not been shown that this acquisition will provide Arizona ratepayers with the maximum benefit

1 of an existing competitive wholesale power market. This assertion should be demonstrated through
2 an RFP process where PWEC competes on the same basis with other market participants to serve
3 APS' power supply needs. Any RFP process where PWEC does not participate head-to-head with
4 other market participants cannot serve as a barometer for concluding that this asset acquisition is at
5 least cost to APS. Gila River stands ready to participate in any such RFP process and will provide
6 APS a fully dispatchable purchase power alternative that is at a more attractive price to ratepayers
7 than the affiliate acquisition. Further, it is Gila River's position that if an affiliate acquisition is
8 allowed without the appropriate RFP process, it will be punitively harmed by the creation of a barrier
9 to entry relative to Gila River's competitive market position.

10 **I. The Agreement Should Require APS to Issue a Competitive RFP to Ensure Arizona**
11 **Ratepayers Receive the Maximum Benefit of a Highly Competitive Wholesale Power**
12 **Market.**

13 The Commission can most effectively protect Arizona ratepayers by evaluating the
14 reasonableness of the affiliate acquisition against the results of an RFP process that, at a minimum,
15 1) provides for independent third-party oversight; 2) establishes evaluation criteria that fairly
16 compares the acquisition and associated rate basing of the acquired assets to long-term purchase
17 power alternatives; and 3) ensures that all parties, including PWEC, participate on the same basis for
18 the opportunity to supply APS' long-term power supply needs.

19 The principle that ratepayers benefit from maximizing wholesale competition underlies
20 recent decisions by FERC under which any transaction between APS and PWEC will be evaluated at
21 the federal level. Therefore, should PWEC prevail as the successful bidder in an RFP process such
22 as that described above, the resulting affiliate acquisition or PPA is far more likely to meet FERC's
23 recently announced guidelines for evaluating and approving these types of transactions.¹

24
25 ¹ In *Ameren Energy Generating Company, et al.*, 108 FERC ¶ 61, 081 (2004), the FERC confirmed that affiliate
26 acquisitions are subject to the *Edgar* standard. See *Boston Edison Company re: Edgar Electric Co.*, 55 FERC ¶
61,382 (1991); See also, *Southern California Edison Company, On Behalf of Mountainview Power Company LLC*
(*Mountainview*), 106 FERC ¶ 61,183 (2004).

1 required. While Gila River respects the Commission's authority to proceed with its review of this
2 acquisition, the acquisition will also require FERC approval. Therefore, Gila River will fully address
3 its concerns at the time APS seeks FERC approval.

4 RESPECTFULLY SUBMITTED this 27th day of September, 2004.

5 FENNEMORE CRAIG, P.C.

6
7 By: 

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10 ORIGINAL and 13 copies of the
11 foregoing hand-delivered for filing
this 27th day of September, 2004 to:

12 Docket Control
13 ARIZONA CORPORATION COMMISSION
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14 Phoenix, Arizona 85007

15 COPY of the foregoing mailed, faxed, or electronically
transmitted this 27 day of September, 2004, to:

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18 All parties of record

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