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AZ CORP COMMISSION
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Arizona Corporation Commission
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OCT 25 2004

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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
COMPANY 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

**RESPONSE OF ARIZONA
PUBLIC SERVICE COMPANY
TO THE "STATEMENT OF
POSITION" BY PANDA GILA
RIVER, L.P.**

I. INTRODUCTION

The Chief Administrative Law Judge issued a Procedural Order on August 20, 2004, asking that the non-signatory parties to the proposed settlement provide a statement of position on the proposed settlement. Rather than simply indicating such a position, Panda Gila River, L. P. ("Panda"), has chosen to submit what is little more than unsworn testimony in which it makes a number of unsupported allegations concerning various provisions of the proposed settlement and the Company's power procurement activities.

Arizona Public Service Company ("APS" or "Company") is confident that the Arizona Corporation Commission ("Commission") will distinguish evidence from argument. Nevertheless, the Company also believes it must respond to Panda's attacks on both the settlement and the Company's 2003 Request for Proposals ("RFP"). Although a participant in every settlement meeting, APS notes that Panda had never previously

1 indicated to this Commission any dissatisfaction with the direction of the settlement
2 negotiations. Similarly, Panda had not indicated either at the bidders' conference of
3 December 3, 2003 (held in conjunction with the 2003 RFP) or during the actual conduct
4 of the RFP, any issues regarding the scope or structure of the Company's 2003 RFP.

5
6 **II. PANDA HAS BEEN GIVEN AMPLE OPPORTUNITIES TO PROVE
7 ITS CLAIMS OF OFFERING A LOWER COST ALTERNATIVE TO
8 THE PWEC ASSETS AND HAS REPEATEDLY FAILED TO DO SO**

9 In both the Track B solicitation and during the course of the Company's December
10 2003 RFP process, Panda was given the opportunity to compete against the generation of
11 Pinnacle West Energy Corporation ("PWEC") and Panda's fellow merchant generators. In
12 the latter instance, Panda had the additional advantage of knowing PWEC's de facto
13 "bid," which was traditional cost-of-service rate base treatment, beforehand. Yet, the un-
14 contradicted evidence in this proceeding is that none of the PPA bids received by APS in
15 response to such RFP could match the overall economics of the Company's original rate
16 base proposal for the PWEC assets.

17 Under the settlement, APS is rate-basing the PWEC assets at a significant discount
18 to that original rate base proposal and at a lower capital cost. To suggest that Panda will
19 now be willing to beat what is, for all purposes, a substantially lower offer (rate-basing of
20 the PWEC assets under terms of the settlement) than that which it failed to match a few
21 short months ago is no more than unsupported conjecture that strains credibility.

22 **III. THE PROPOSED SETTLEMENT ALREADY COMMITS APS
23 TO A COMPETITIVE RFP IN 2005**

24 Under Section IX of the proposed settlement, APS is already committing to a
25 competitive RFP. It also indicates that all competing resources will be evaluated on the
26 same criteria. See Proposed Settlement at Paragraph 78 (d). Thus, the only two additional

1 provisions sought by Panda appear to be: (1) a mandatory requirement that PWEC
2 participate in the RFP; and (2) use of an independent monitor.

3 Panda's claim that PWEC's participation in the proposed RFP process with its
4 single remaining asset is somehow critical to a fair evaluation of non-PWEC bids defies
5 logic. Indeed, it would seem to APS that an RFP process that is free from even the
6 remotest potential for affiliate preference would further the interests of Panda and other
7 merchant generators. This was why the "no PWEC participation" provision was included
8 in the proposed settlement in the first instance and why it is supported by the merchant
9 power signatories to the settlement.

10 No party has previously claimed that an independent monitor is required in a
11 competitive solicitation for long-term resources not involving a bid or bids from an APS
12 affiliate. APS sees no purposes for one now. In the event an APS affiliate chooses to
13 participate in a post-2005 long-term competitive solicitation, the proposed settlement
14 itself already calls for the independent monitor requested by Panda in its "Statement of
15 Position."

16 **IV. THE PWEC ACQUISITION CREATES NO BARRIERS** 17 **TO MARKET ENTRY FOR PANDA**

18 Panda would have this Commission believe that its only economic market is the
19 APS service area and that to the extent APS acquires resources from anyone other than
20 Panda, Panda is thus foreclosed from the market. If true, Panda's problem is not the
21 acquisition of the PWEC assets. Panda would be equally "foreclosed" if APS were to
22 acquire assets from, or enter into long-term PPAs with, Duke (Arlington), Sempra
23 (Mesquite), Harquahala, or any of the other generation owners in its service area,
24 including incumbent utilities such as Salt River Project and Tucson Electric. APS doubts
25 that Panda would have invested so much money in such a flawed business plan.
26 Moreover, this argument ignores the opportunity to sell Panda's output directly to retail

1 customers in the APS and adjacent service areas or to competitive retail electric service
2 providers serving load within such service areas.

3 But even if APS were Panda's only feasible market, that is of concern only to
4 Panda. Panda's interests should not be confused with the interests of the competitive
5 wholesale market, let alone the public interest. After all, Panda's position is directly at
6 odds with the broader alliance of merchant generators represented by the Arizona
7 Competitive Power Alliance ("AzCPA") and the individual merchant generators who have
8 signed the proposed Settlement and whose objectives are ostensibly the same as Panda's,
9 i.e., "to achieve an environment in which there exists a viable and effective wholesale
10 market into which we [the merchant generators] can sell power." (Settlement Direct
11 Testimony of Gregg Patterson at 4-5.) Together, these merchant generators account for
12 over 5500 MWs of Arizona generation.

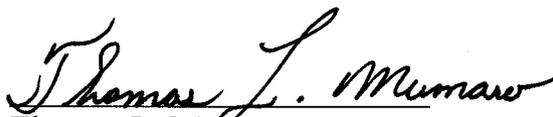
13 Panda's claims that it has some unique value in serving Valley needs are likewise
14 simply inaccurate. Unlike nearly 700 MW of the PWEC generation, none of Panda's
15 capacity is located within the Valley load-pocket. Its ability to provide power from outside
16 the Valley load pocket is no different that those of numerous providers, including PWEC
17 and the other merchant power entities cited above.

18 V. CONCLUSION

19 The Commission should reject Panda's unsupported allegations. They are
20 inconsistent with the record evidence, do not themselves constitute evidence, and are at
21 odds with Panda's previous conduct and representations in this proceeding. The proposed
22 settlement has the unqualified support of the overwhelming majority of the merchant
23 generator community in Arizona and of competitive retail electric providers. Its carefully
24 negotiated provisions, including but not limited to those dealing with the treatment of the
25

1 PWEC assets and competitive procurement by APS, are deserving of the equally
2 unqualified support of the Commission.

3 RESPECTFULLY SUBMITTED this 25th day of October 2004

4 

5 Thomas L. Mumaw
6 Karilee S. Ramaley

7 Pinnacle West Capital Corporation
8 Law Department

9 and

10 Kimberly Grouse
11 SNELL & WILMER LLP

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15 ORIGINAL AND 13 COPIES OF THE FOREGOING
16 filed this 25th day of October 2004, with:

17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, AZ 85007;

21 Copies of the foregoing mailed, faxed or
22 transmitted electronically this 25th day of
23 October 2004 to:

24 All Parties of Record

25 

26 Vicki DiCola

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