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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

2004 DEC 10 P 3:45

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission
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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

**NOTICE OF SUBMISSION OF
LATE-FILED EXHIBITS**

SACKS TIERNEY P.A., LAWYERS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

PLEASE TAKE NOTICE THAT Constellation NewEnergy, Inc. and Strategic Energy, L.L.C. hereby supplement their exhibit list as follows:

- CNE/SEL - 6 Summary of Jennifer Chamberlin Testimony on behalf on Strategic Energy, L.L.C.; and
- CNE/SEL - 7 Summary of Testimony of Mona Tierney on behalf of Constellation NewEnergy, Inc.

DATED this 10th day of December, 2004.

SACKS TIERNEY P.A.

By

Marvin S. Cohen
Charlene Gibson Robertson
Attorneys for Constellation NewEnergy, Inc.
and Strategic Energy, L.L.C.

1 ORIGINAL AND 13 COPIES OF
2 THE FOREGOING FILED
3 this 10th day of December, 2004, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8 COPIES OF THE FOREGOING
9 MAILED/E-MAILED
10 this 10th day of December, 2004, to:

11 Jeffrey B. Guldner
12 Kimberly A. Grouse
13 Faraq Sanei
14 SNELL & WILMER
15 400 E. Van Buren Street
16 One Arizona Center
17 Phoenix, Arizona 85004-2202
18 jguldner@swlaw.com
19 kgrouse@swlaw.com
20 fsanei@swlaw.com
21 Attorneys for Arizona Public Service Company

22 Thomas L. Mumaw
23 Karilee S. Ramaley
24 PINNACLE WEST
25 CAPITAL CORPORATION
26 P.O. Box 53999, MS 8695
27 Phoenix, Arizona 85072-3999
28 thomas.mumaw@pinnaclewest.com
karilee.ramaley@pinnaclewest.com

18 C. Webb Crockett
19 FENNEMORE CRAIG
20 3003 North Central Avenue, Suite 2600
21 Phoenix, Arizona 85012
22 wcrocket@fclaw.com
23 Attorneys for AECC and Phelps Dodge

24 Major Allen G. Erickson
25 AFCES A/ULT
26 139 Barnes Drive, Suite 1
27 Tyndall AFB, Florida 32403-5319
28 allen.erickson@tyndall.af.mil
Attorney for FEA

25 Michael L. Kurtz
26 BOEHM, KURTZ & LOWRY
27 36 East Seventh Street, Suite 2110
28 Cincinnati, Ohio 45202
mkurtzlaw@aol.com
Attorneys for Kroger Company

- 1 Scott Wakefield
RUCO
- 2 1110 West Washington Street, Suite 220
Phoenix, Arizona 85007
- 3 swakefield@azruco.com
- 4 Walter W. Meek
AUIA
- 5 2100 North Central Avenue, Suite 210
Phoenix, Arizona 85067
- 6 meek@auia.org
- 7 Nicholas J. Enoch
LUBIN & ENOCH
- 8 349 North Fourth Avenue
Phoenix, Arizona 85003
- 9 Nicholas.enoch@azbar.org
Attorneys for IBEW
- 10
- 11 Bill Murphy
MURPHY CONSULTING
2422 East Palo Verde Drive
Phoenix, Arizona 85016
- 12 billmurphy@cox.net
Consultant for Arizona Cogeneration Assn.
- 13
- 14 Jay L. Shapiro
Patrick J. Black
- 15 FENNEMORE CRAIG
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
- 16 jshapiro@fclaw.com
pblack@fclaw.com
Attorneys for Panda Gila River, L.P.
- 17
- 18 Robert W. Geake
ARIZONA WATER COMPANY
P.O. Box 29006
Phoenix, Arizona 85038-9006
- 19 bgeake@azwater.com
- 20
- 21 Andrew W. Bettwy
Bridget A. Branigan
SOUTHWEST GAS CORPORATION
5241 Spring Mountain Road
Las Vegas, Nevada 89150
- 22 andy.bettwy@swgas.com
- 23
- 24
- 25 Timothy M. Hogan
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
202 East McDowell Road, Suite 153
Phoenix, Arizona 85004
- 26 thogan@aclpi.org
Attorneys for Western Resource Advocates
- 27
- 28

1 Paul R. Michaud
MICHAUD LAW FIRM
2 23 Crimson Heights Road
Portland, CT 06480
3 michaudlaw@msn.com
Attorneys for Dome Valley Energy Partners, LLC

4 Jeff Schlegel
5 SWEEP Arizona Representative
1167 W. Samalayuca Drive
6 Tucson, AZ 85704
schlegelj@aol.com

7 Raymond S. Heyman
8 Laura Schoeler
ROSHKA, HEYMAN & DeWULF
9 400 East Van Buren, Suite 800
Phoenix, Arizona 85004
10 rheyman@rhd-law.com
lschoeler@rhd-law.com
11 Attorneys for UniSource Energy Services

12 Deborah R. Scott
UNISOURCE ENERGY SERVICES
13 One South Church Street, Suite 200
Tucson, Arizona 85702
14 dscott@tucsonelectric.com

15 J. William Moore
1144 East Jefferson
16 Phoenix, Arizona 85034
jwilliammoore@worldnet.att.net
17 Attorney for Kroger Co.

18 Cynthia Zwick
ARIZONA COMMUNITY ACTION ASSOCIATION
19 2627 North 3rd Street Suite Two
Phoenix, Arizona 85004
20 czwick@azcaa.org

21 S. David Childers
LOW & CHILDERS
22 2999 North 44th Street, Suite 250
Phoenix, Arizona 85018
23 dchilders@lowchilders.com
Attorney for Arizona Competitive Power Alliance

24 James M. Van Nostrand
25 Katherine McDowell
George M. Galloway
26 STOEL RIVES
900 SW Fifth Avenue, Ste. 2600
27 Portland, Oregon 97204
jmvannostrand@stoel.com
28 kamcdowell@stoel.com
Attorneys for Arizona Competitive Power Alliance

1 Greg Patterson, Executive Director
ARIZONA COMPETITIVE POWER ALLIANCE
2 916 West Adams, Suite 3
Phoenix, Arizona 85007
3 greg@azcpa.org

4 Michael A. Curtis
MARTINEZ & CURTIS, P.C.
5 2712 North Seventh Street
Phoenix, Arizona 85006-1090
6 mcurtis401@aol.com
Attorneys for Town of Wickenburg

7
8 Rebecca C. Salisbury
56th Fighter Wing JA
7383 North Litchfield Road
9 Luke AFB, Arizona 85309-1540
rebecca.salisbury@like.af.mil
10 Attorney for Federal Executive Agencies

11 Jon Poston
AARP Electric Rate Project
12 6733 East Dale Lane
Cave Creek, Arizona 85331
13 Jon_Poston@prodigy.net

14 Coralette Hannon
AARP Department of State Affairs
15 6705 Reedy Creek Road
Charlotte, North Carolina 28215
16 channon@aarp.org

17 Lawrence V. Robertson
MUNGER CHADWICK
18 333 North Wilmot, Suite 300
Tucson, Arizona 85711
19 lvrobertson@mungerchadwick.com
Attorneys for Southwestern Power Group II, LLC,
20 Mesquite Power and Bowling Power Station

21 Jay I. Moyes
MOYES STOREY
22 3003 N. Central Avenue, Suite 1250
Phoenix, AZ 85012
23 limoyes@lawms.com
Attorneys for PPL Sundance, LLC and PPL
24 Southwest Generation Holdings, LLC

25 Jesse A. Dillon
PPL Services Corporation
26 Two N. Ninth Street
Allentown, PA 18101
27 jadillon@pplweb.com

28

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- 2
- 3
- 4
- 5
- 6
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- 14
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- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Sean Seitz
AriSEIA
5056 40th Street, Suite C
Phoenix, AZ 85040
sean@americanpv.com

Robert Annan
ANNAN GROUP
6605 E. Evening Glow Drive
Phoenix, AZ 85262
annan@globalcrossing.net

Lisa O'Brien

SUMMARY OF JENNIFER CHAMBERLIN TESTIMONY

1 My name is Jennifer Chamberlin. I am Strategic Energy's Manager of Regulatory
2 Affairs for the Western Region. Strategic Energy is an energy management company that
3 provides electric load aggregation and power supply coordination services. Strategic Energy is
4 licensed to provide retail electric service in 12 states and has more than 42,000 commercial and
5 industrial customers in states that have enacted retail choice, including Pennsylvania, Michigan,
6 Maryland, Ohio, New York, Massachusetts, Texas, and California—with many more states
7 expected to come online in the next few years. Strategic Energy manages or procures more than
8 \$2 billion dollars of electricity and natural gas per year.

9 I am testifying in support of the Proposed Settlement document in Docket No E-01345A-
10 03-0437. Strategic Energy, jointly with Constellation NewEnergy sponsored the testimony of
11 Witness Mark Fulmer and participated extensively in the Settlement conferences.

12 The Proposed Settlement, crafted through a collaboration of parties representing the gamut of
13 Arizona's ratepayer interests, effectively addresses the complex issues raised in this case. We
14 believe the proposals agreed upon resolve these issues in a manner that serves the public interest.

15 Strategic's goal in participating in this case was to help foster a robust competitive retail
16 and wholesale marketplace within Arizona. We believe that the collaborative process undertaken
17 to achieve the Proposed Settlement took into account the interests of each party and achieved a
18 balanced result that is an excellent compromise for all parties involved and for the ratepayers of
19 Arizona. A number of elements of the Agreement tend to preserve the potential for retail
20 competition in the APS service territory:

21 1) Paragraph 8 requires APS to forgo any stranded cost claims associated with the
22 PWEC assets now and in the future.

1 2) Paragraph 15 adds West Phoenix CC-4 and West Phoenix CC-5 to the pool of “local
2 generation assets” defined by the AISA or successor protocol, which will allow generation from
3 these assets to be made available to serve direct access load during must-run conditions.

4 3) Section IX provides for APS to engage in a Competitive Power Procurement process.

5 4) Section XI provides that APS will not, prior to 2015, add self-built generation to its
6 system unless the Commission determines that the wholesale market is unable to efficiently meet
7 APS’s power needs.

8 5) Rate Design: A key component in fostering retail competition is providing customers
9 with an unbundled generation component that is adequate to allow a customer to shop for
10 alternative energy supply. The rate designs for commercial and industrial customers in the
11 Proposed Settlement bring the generation component of APS rates to a cost of service level and
12 improve customers’ opportunity to take advantage of competitive markets.

13 6) Transmission Cost Adjustor (TCA): The TCA described in Section XVI will help
14 ensure that customers have equivalent costs for electric transmission whether they are on
15 bundled utility service or taking Direct Access service.

16 7) Demand Side Management (DSM): The Proposed Settlement calls for a significant
17 increase in DSM spending funded via base rates and adjustor mechanisms. Paragraph 53 ensures
18 that Direct Access customers will be allowed to benefit from the programs they are funding.

SUMMARY OF TESTIMONY OF MONA TIERNEY

My name is Mona Tierney. I am Director of Government Affairs for Constellation NewEnergy, Inc., ("CNE" or "NewEnergy") in the West Region. CNE is the retail electricity services entity within Constellation Energy Group, Inc. ("Constellation Energy"). Constellation Energy is the parent company of Constellation NewEnergy. CNE provides retail competitive supply service. CNE currently serves approximately 10,000 MW of peak commercial and industrial retail demand in 15 states and two Canadian provinces.¹ Some of the other subsidiaries of Constellation Energy include wholesale generation companies, a wholesale supply group and a regulated gas and electric utility, the Baltimore Gas and Electric Company.

CNE and Strategic Energy, LLC ("SE") jointly sponsored testimony proffered by Witness Mark Fulmer. CNE/SE have participated in the settlement conferences in this docket and have determined that the settlement reflects the best negotiated outcome for the issues raised by CNE/SE and the other matters at issue in this proceeding.

CNE had several primary concerns related to the proposals APS presented in its rate case. CNE believes that the settlement reflects a balance of the various interests of its supporters. CNE believes that its issues have been given equal consideration relative to the various other interests and that the settlement strikes a balance of those positions.

First: With regard to the incorporation of the PWEC assets into APS's rate base, the settlement provides for a moratorium of utility-built projects until 2015, unless specifically approved by the Arizona Corporation Commission; and the settlement

1 provides for the utility to issue a request for proposal (RFP) in 2005 for 1000 MW for
2 deliveries to begin 2007.

3 Secondly, the settlement provides that the incorporation of the PWEC assets into
4 APS's rate base will not result in a new claim for stranded cost recovery if customers
5 served by APS decide to shop in the retail competitive supply market.

6 Thirdly, the settlement provides that in planning for service to customers in its
7 certificated area, the utility must recognize the existence of the Commission's direct
8 access program and the potential for future direct access customers.

9 Fourthly, the cost of the PWEC assets will be incorporated into the generation
10 component of rates, with only ancillaries recovered in the transmission component. The
11 Power Supply Adjustor ("PSA") will be recovered only from bundled customers, and not
12 direct access customers. The settlement provides that direct access customers will be
13 able to participate in any program for which they provide funding through the system
14 benefits charges.

15 Fifth, at issue in the proceeding was the provision of utility metering and billing
16 to direct access customers. This issue has been directed to the Electric Competition
17 Advisory Group ("ECAG"), or other similar process.

18 Lastly, CNE is a board member of the Arizona Independent Scheduling
19 Administrator. We believe the proposed Settlement preserves that important
20 instrumentality for access to the transmission system on a non-discriminatory basis.

21

¹ CNE serves commercial and industrial customers in California, D.C., Delaware, Illinois, Maine, Massachusetts, Maryland, Michigan, Rhode Island, New Hampshire, New Jersey, New York, Ohio, Pennsylvania and Texas, as well as in Ontario and Alberta, Canada.

REVISED CNE/SEL EXHIBIT LIST

- CNE/SEL-1 Direct testimony of Mark Fulmer
- CNE/SEL-2 Cross rebuttal testimony of Mark Fulmer
- CNE/SEL-3 Settlement Direct Testimony of Jennifer Chamberlin
- CNE/SEL-4 Settlement Direct Testimony of Mona Tierney
- CNE/SEL-5 Lawrence J. Peterson's Statement of Background and Qualifications
- CNE/SEL-6 Summary of Jennifer Chamberlin Testimony
- CNE/SEL-7 Summary of Testimony of Mona Tierney