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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

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DOCKETED

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
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AZ CORP COMMISSION
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MAY 03 2005

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IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606.

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE DATES.

DOCKET NO. E-01933A-02-0069

**PROCEDURAL ORDER ON
APS CODE OF CONDUCT HEARING
AND ADMINISTRATIVE CLOSURE
OF DOCKET NO. E-01345A-01-0822
AND E-01933A-02-0069**

BY THE COMMISSION:

On September 10, 2002, the Commission issued Decision No. 65154 ("Track A Decision") in these consolidated dockets. Decision No. 65154 ordered Arizona Public Service Company ("APS") and Tucson Electric Power Company ("TEP") to submit modifications to their existing Codes of Conduct.

On November 12, 2002, APS filed modifications to its Code of Conduct. Also on November 12, 2002, TEP filed a letter with the Commission stating that neither TEP nor its parent, UniSource Energy, has a competitive electric service provider, a separate generation affiliate, or an affiliate involved in the marketing and trading of wholesale power.

On March 14, 2003, the Commission issued Decision No. 65743 ("Track B Decision") in these consolidated dockets. Decision No. 65743 directed the Commission's Utilities Division Staff

1 (“Staff”) to file reports in these dockets on the Codes of Conduct previously filed by APS and TEP,
2 within 60 days of the Independent Monitor’s final reports. Decision No. 65743 stated that the Staff
3 Reports should include, but not be limited to, an analysis of the Standards of Conduct developed for
4 the Track B solicitations, their applicability to the respective Codes of Conduct filed by APS and
5 TEP, and recommendations regarding their incorporation into the Codes of Conduct. Decision No.
6 65743 provided that hearings would be scheduled on the Codes of Conduct following the filing of
7 those Staff Reports.

8 Following the filing of a Staff Report in these dockets on August 13, 2003, a Procedural
9 Conference was held on October 3, 2003. APS, TEP, Panda Gila River, LP, the Arizona Utilities
10 Investors Association (“AUIA”), the Residential Utility Consumer Office (“RUCO”) and Staff
11 entered appearances and discussed the procedural schedule for hearings on the APS and TEP Codes
12 of Conduct.

13 On October 28, 2003, following the Procedural Conference, a Procedural Order was issued.
14 The Procedural Order directed that Staff monitor the situation between TEP and its affiliates and
15 make a recommendation to the Commission for revisions to TEP’s Code of Conduct if, in Staff’s
16 judgment, revisions are warranted. It also ordered TEP to file a revised Code of Conduct for
17 Commission approval within 60 days of the formation or acquisition of any affiliate that sells
18 wholesale or competitive retail electricity.

19 The October 28, 2005 Procedural Order also adopted an unopposed recommendation that a
20 hearing not be scheduled on the proposed modifications to APS’ Code of Conduct until after the
21 conclusion of the APS rate case pending in Docket No. E-01345A-03-0437.

22 **APS Code of Conduct Hearing Procedural Schedule**

23 On April 7, 2005, the Commission issued Decision No. 67744 in APS’ rate case docket. By
24 Procedural Order issued April 13, 2005, a procedural conference was scheduled for the purpose of
25 discussing procedural matters relating to the hearing on APS’ Code of Conduct.

1 A Procedural Conference was held on April 27, 2005 as scheduled. APS, Gila River Power,
2 LP,¹ TEP, AUIA, RUCO and Staff appeared through counsel. APS proposed a procedural schedule
3 that included APS' filing of an updated Code of Conduct, along with accompanying direct testimony,
4 on July 29, 2005; the filing of responsive direct testimony by the parties on September 30, 2005; and
5 the filing of rebuttal testimony on October 21, 2005. APS stated that allowing 90 days for the
6 preparation of the updated Code of Conduct would allow time for APS to consult with the parties in
7 its development of the updated Code of Conduct prior to the filing. All parties appearing were in
8 agreement with the proposed procedural schedule.

9 The procedural schedule proposed by APS is reasonable and should be adopted.

10 **Administrative Closure of Docket No. 01345A-01-0822 and E-01933A-02-0069**

11 Docket No. E-01345A-01-0822 was opened by an application for a variance filed by APS on
12 October 18, 2001. Docket No. E-01933A-02-0069 was opened by an application for variance filed
13 by TEP on January 28, 2002. By Procedural Order issued February 8, 2002, the two variance dockets
14 listed above were consolidated with Docket No. E-00000A-02-0051, E-00000A-01-0630, and E-
15 1933A-08-0471. Procedural Orders were issued setting hearings on the variance applications in
16 Docket No. 01345A-01-0822 and E-01933A-02-0069.

17 On April 26, 2002, during a Special Open Meeting of the Commission, the hearing scheduled
18 for April 29, 2002 on APS' variance application in Docket No. E-01345A-01-0822 was stayed. By
19 Procedural Order issued May 2, 2002, the hearing scheduled on TEP's variance application in Docket
20 No. E-01933A-02-0069 was also stayed. Subsequent to the stays in those dockets, hearings were
21 held and the Commission issued the Track A and Track B Decisions. The Track A and Track B
22 Decisions did not lift the stays of the APS and TEP variance applications, and the dockets remain
23 open. Neither APS nor TEP have requested that further action be taken on their applications in the
24 variance dockets. If no action is required on the variance applications, Docket No. E-01345A-01-
25 0822 and E-01933A-02-0069 should be administratively closed. Therefore, unless a party to Docket
26

27 _____
28 ¹ A filing was made in this docket on April 27, 2005, stating that Panda Gila River, LP has changed its name to Gila River Power, LP.

1 No. E-01345A-01-0822 or E-01933A-02-0069 request that the dockets remain open, a procedural
2 order will be issued administratively closing the dockets.

3 IT IS THEREFORE ORDERED that any motions requesting that Docket No. E-01345A-01-
4 0822 or E-01933A-02-0069 remain open shall be filed by **May 27, 2005**.

5 IT IS FURTHER ORDERED that that the hearing on the Code of Conduct for Arizona Public
6 Service Company shall commence on **November 14, 2005 at 10:00 a.m.**, or as soon thereafter as is
7 practical, at the Commission's offices, 1200 West Washington, Phoenix, Arizona 85007.

8 IT IS FURTHER ORDERED that a pre-hearing conference shall be held on **November 10,**
9 **2005, at 1:30 p.m.** at the Commission's Phoenix offices, for the purpose of scheduling witnesses and
10 the conduct of the Arizona Public Service Company Code of Conduct hearing.

11 IT IS FURTHER ORDERED that Arizona Public Service Company shall file an updated
12 proposed Code of Conduct, along with supporting direct testimony and associated exhibits to be
13 presented at hearing, on or before **July 29, 2003**.

14 IT IS FURTHER ORDERED that direct testimony and associated exhibits to be presented at
15 hearing by parties other than Arizona Public Service Company shall be reduced to writing and filed
16 on or before **September 30, 2005**.

17 IT IS FURTHER ORDERED that rebuttal testimony and associated exhibits to be presented
18 at hearing by any party shall be reduced to writing and filed on or before **October 21, 2005**.

19 IT IS FURTHER ORDERED that any objections to any testimony or exhibits that have been
20 prefiled as of October 21, 2005, shall be made before or at the November 10, 2005 pre-hearing
21 conference.

22 IT IS FURTHER ORDERED that all testimony filed shall include a table of contents that lists
23 the issues discussed.

24 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to
25 pre-filed testimony shall be reduced to writing and filed no later than five days before the witness is
26 scheduled to testify.
27
28

1 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the
2 pre-filed testimony of each of their witnesses and shall file each summary by 1:30 p.m. on **November**
3 **10, 2005**.

4 IT IS FURTHER ORDERED that copies of summaries shall be served upon the Presiding
5 Officer, the Commissioners, and the Commissioners' aides, as well as the parties of record.

6 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
7 except that all motions to intervene must be filed on or before **September 16, 2005**. Parties who
8 have previously requested and been granted intervention in any of these consolidated proceedings
9 need not request intervention, as they are already parties to this proceeding.

10 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
11 regulations of the Commission, except that: until October 7, 2005, any objection to discovery
12 requests shall be made within 7 days² of receipt and responses to discovery requests shall be made
13 within 10 days of receipt; thereafter, objections to discovery requests shall be made within 5 days and
14 responses shall be made in 7 days; the response time may be extended by mutual agreement of the
15 parties involved if the request requires an extensive compilation effort; and no discovery requests
16 shall be served after November 3, 2005.

17 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
18 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
19 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
20 request, a procedural hearing will be convened as soon as practicable; and that the party making such
21 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the
22 hearing provide a statement confirming that the other parties were contacted.³

23 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of
24 the filing date of the motion.

25 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date
26 of the response.

27 ² "Days" means calendar days.

28 ³ The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that public notice of the hearing in this matter shall be provided
2 in the following form and style:

3 **PUBLIC NOTICE OF HEARING CONCERNING**
4 **ARIZONA PUBLIC SERVICE COMPANY'S CODE OF CONDUCT**
5 **Docket No. E-00000A-02-0051 et al.**

6 The Arizona Corporation Commission ("Commission"), in Decision No. 65154
7 (September 10, 2002) ordered Arizona Public Service Company to submit
8 modifications to its existing Code of Conduct, which, as required by rules adopted by
9 the Commission, addresses procedures, guidelines and policies to govern activities
10 between regulated electric utilities and their competitive electric affiliates for the
11 purpose of preventing anti-competitive activities.

12 The Commission will hold a public hearing on this matter beginning **November 14,**
13 **2005 at 10:00 a.m.** at the Commission's offices, 1200 West Washington Street,
14 Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

15 The law provides for an open public hearing at which, under appropriate
16 circumstances, interested parties may intervene. Intervention shall be permitted to any
17 person entitled by law to intervene and having a direct and substantial interest in the
18 matter. Persons desiring to intervene must file a written motion to intervene with the
19 Commission no later than **September 16, 2005**. The motion to intervene must be sent
20 to all parties of record, and shall contain the following:

- 21 1. The name, address, and telephone number of the proposed intervenor
22 and of any entity upon whom service of documents is to be made if
23 different from the intervenor;
- 24 2. A short statement of the proposed intervenor's interest in the
25 proceeding; and
- 26 3. A statement certifying that a copy of the motion to intervene has been
27 mailed to all parties of record in the proceeding.

28 The granting of intervention, among other things, entitles a party to present sworn
evidence at the hearing and to cross-examine other witnesses. However, failure to
intervene will not preclude any interested person or entity from appearing at the
hearing and providing public comment or from filing written comments in the record
of the case. You will not receive any further notice of this proceeding unless you
request it.

If you have any questions about this application, or want further information on
intervention, you may contact the Consumer Services Section of the Commission at
1200 W. Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000.

The Commission does not discriminate on the basis of disability in admission to its
public meetings. Persons with a disability may request a reasonable accommodation
such as a sign language interpreter, as well as request this document in an alternative
format, by contacting contacting Linda Hogan, ADA Coordinator, voice phone
number 602/542-3931, E-mail LHogan@azcc.gov Requests should be made as early
as possible to allow time to arrange the accommodation.

1 IT IS FURTHER ORDERED that Arizona Public Service Company shall cause a copy of the
2 above-ordered notice to be published in newspapers of statewide circulation no later than **May 31,**
3 **2005,** and shall file certification of publication as soon as practicable after publication has been
4 completed.

5 IT IS FURTHER ORDERED that notice shall be deemed complete upon publication of same,
6 notwithstanding the failure of an individual to read the notice.

7 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
8 Communications) applies to this proceeding and shall remain in effect until the Commission's
9 Decision in this matter is final and non-appealable.

10 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
11 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

12 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
13 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

14 IT IS FURTHER ORDERED that Docket No. E-01345A-01-0822 shall be administratively
15 closed unless an objection to the administrative closure of the docket is filed by May 27, 2005.

16 IT IS FURTHER ORDERED that Docket No. E-01933A-02-0069 shall be administratively
17 closed unless an objection to the administrative closure of the docket is filed by May 27, 2005.

18 IT IS FURTHER ORDERED that any party who no longer wishes to receive copies of filings
19 in these dockets shall file a request to be removed from the service list. Removal shall be effective
20 upon the filing of the request.

21 DATED this 30th day of May, 2005.

22
23
24 
TEENA WOLFE
25 ADMINISTRATIVE LAW JUDGE
26 ...
27 ...
28 ...

1 Copies of the foregoing mailed/delivered
2 this 2 day of May, 2005 to:

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