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Arizona Corporation Commission

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7 **BEFORE THE ARIZONA CORPORAT**

8 IN THE MATTER OF THE ARIZONA )  
9 PUBLIC SERVICE COMPANY'S )  
10 REQUEST FOR A VARIANCE OF )  
11 CERTAIN REQUIREMENTS OF A.C.C. )  
12 R14-2-1606 )

Docket No.

E-00000A-02-0051  
E-01345A-01-0822  
E-00000A-01-0630  
E-01933A-02-0069  
E-01933A-98-0471

**REPLY OF SEMPRA ENERGY RESOURCES  
TO ARIZONA PUBLIC SERVICE  
COMPANY'S RESPONSE TO PANDA GILA  
RIVER'S REQUEST FOR ORDER TO SHOW  
CAUSE**

13 Sempra Energy Resources ("Sempra") hereby submits its reply to the Response to Request  
14 for Order to Show Cause ("Response") filed by Arizona Public Service Company ("APS") on March  
15 29, 2002 in the above-captioned proceeding. In that regard, Sempra incorporates herein as a part of  
16 its reply the discussion and legal arguments set forth in Panda Gila River L.P.'s ("Panda") April 5,  
17 2002 Reply to APS's Response. In the interest of brevity, Sempra will not restate such discussion  
18 and arguments at this time.

19  
20 However, as noted by Commissioner Spitzer in his March 26, 2002 letter to Commissioners  
21 Mundell and Irvin, "the issues raised [by Panda's Request] go to the heart of the [APS] Request for  
22 Variance that initiated this docket." The question then is whether the procedural manner of  
23 resolution suggested by Panda is timely, efficient and fair to all concerned. The answer is a  
24 resounding "yes," notwithstanding APS's strawman and red herring arguments to the contrary.

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1 For, as Panda notes in its Response, conduct of the requested RFP procedure need not delay  
2 a final Commission decision on APS's Request for Variance. To the contrary, it can be conducted  
3 within the general time frame needed for Commission consideration of and ruling upon the variance  
4 request; and the Commission's ultimate decision upon the Request for Variance would be made on  
5 a more informed basis. The most persuasive testimony by contending experts cannot credibly offset  
6 or override the actual results of a properly conceived and conducted RFP.  
7

8 Throughout this proceeding, APS has (i) maintained that there is no middle ground between  
9 its proposed PPA and the bleak scenario it contends would unfold if reliance were placed on the  
10 competitive market; and (ii) insisted that its "solution" is the only option available. If that is true,  
11 then APS should have no hesitation about having its proposition tested. Instead, APS accuses the  
12 other parties of delaying the instant proceeding. A fair, independent RFP process would test the  
13 accuracy of APS's assertions and provide the Commission with the real-life data it needs to  
14 determine whether or not the APS proposal is in the public interest. Otherwise, the Commission will  
15 be asked to make a decision based on conflicting projections, assumptions, hypotheses and expert  
16 opinion. As Panda indicates, these cannot adequately substitute for bona fide offers based on  
17 concrete and specific needs and terms.  
18

19 Moreover, APS is not "entitled" to have its Request for Variance processed in the manner  
20 it has proposed. The Commission has the discretion to determine the procedural manner through  
21 which APS's request will be considered; and, the Commission may change its thinking in that regard  
22 at any time, as long as the participating parties' due process rights are recognized and provided for.  
23 In this instance, such change in thinking can, and should, include use of the RFP procedure requested  
24 by Panda.  
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WHEREFORE, Sempra hereby requests that the Commission issue an order (i) staying the procedural schedule currently in effect in the above-captioned proceeding, (ii) directing APS to design and implement the RFP procedure proposed in Panda's March 19, 2002 Request for Order to Show Cause, and (iii) reserving to itself the discretion to determine when and how to resolve APS's Request for Variance once the results of the RFP have been received and evaluated.

DATED: April 5, 2002

Respectfully submitted,

Theodore E. Roberts, Legal Department  
Sempra Energy

and

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Original and 15 copies filed  
with Docket Control this  
5<sup>th</sup> day of April, 2002

Copy of the foregoing mailed  
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to:

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