



0000068932

ORIGINAL

Arizona Corporation Commission

Lawrence V. ROBERTSON, Jr. (001709)

DOCKETED

RECEIVED

**MUNGER CHADWICK, P.L.C.**

APR 05 2002

2002 APR -5 P 4: 12

National Bank Plaza

333 N. Wilmot, Suite 300

Tucson, Arizona 85711

(520) 721-1900; Facsimile (520) 747-1550

DOCKETED BY

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

E-Mail: [lvrobertson@mungerchadwick.com](mailto:lvrobertson@mungerchadwick.com)

Attorneys for: Southwestern Power Group II, LLC

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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

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

Docket No

**REPLY OF SOUTHWESTERN POWER  
GROUP II, LLC TO ARIZONA PUBLIC  
SERVICE COMPANY'S RESPONSE TO  
PANDA GILA RIVER'S REQUEST FOR  
ORDER TO SHOW CAUSE**

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

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

For, as Panda notes in its Response, conduct of the requested RFP procedure need not delay a final Commission decision on APS's Request for Variance. To the contrary, it can be conducted within the general time frame needed for Commission consideration of and ruling upon the variance

MUNGER CHADWICK, P.L.C.  
ATTORNEYS AT LAW  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900

MUNGER CHADWICK, P.L.C.  
ATTORNEYS AT LAW  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

request; and the Commission's ultimate decision upon the Request for Variance would be made on a more informed basis. The most persuasive testimony by contending experts cannot credibly offset or override the actual results of a properly conceived and conducted RFP.

Moreover, APS is not "entitled" to have its Request for Variance processed in the manner it has proposed. The Commission has the discretion to determine the procedural manner through which APS's request will be considered; and, the Commission may change its thinking in that regard at any time, as long as the participating parties' due process rights are recognized and provided for. In this instance, such change in thinking can, and should, include use of the RFP procedure requested by Panda.

WHEREFORE, Southwestern Power Group II, LLC 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 implement the type of 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,

By: Lawrence V. Robertson, Jr. / JMR  
Lawrence V. Robertson, Jr.  
Munger Chadwick, P.L.C.  
Attorneys for Southwestern Power Group II,  
LLC

MUNGER CHADWICK, P.L.C.  
ATTORNEYS AT LAW  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Copy of the foregoing mailed  
this 5<sup>th</sup> day of April, 2002  
to:

All parties of record

MUNGER CHADWICK, P.L.C.  
ATTORNEYS AT LAW  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COPY delivered this day to:**

Chairman William Mundell  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Commissioner Jim Irvin  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Commissioner Marc Spitzer  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Hercules Dellas, Aide to Chairman Mundell  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Paul Walker, Aide to Commissioner Spitzer  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Lyn Farmer  
Chief Administrative Law Judge  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, Arizona

Chris Kempley  
Chief Counsel  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, Arizona

Ernest Johnson  
Utilities Director  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, Arizona

1           **COPY mailed this day to:**

2  
3           Scott S. Wakefield  
4           RUCO  
5           2828 N. Central Ave., Ste. 1200  
6           Phoenix, AZ 85004

7  
8           Greg Patterson  
9           245 West Roosevelt  
10          Phoenix, AZ 85003  
11          Arizona Competitive Power Alliance

12  
13          Walter W. Meek, President  
14          Arizona Utility Investors Association  
15          2100 N. Central Ave., Ste. 210  
16          Phoenix, AZ 85004

17  
18          Roger K. Ferland  
19          QUARLES & BRADY STREICH LANG, LLP  
20          Renaissance One  
21          Two North Central  
22          Phoenix, Arizona 85004-2391  
23          PG&E National Energy Group

24  
25          Steven J. Duffy  
26          RIDGE & ISAACSON  
27          3101 N. Central Ave., Ste. 1090  
28          Phoenix, AZ 85012

29  
30          Steve Lavigne  
31          Director of Regulatory Affairs  
32          Duke Energy  
33          4 Triad Center, Ste. 1000  
34          Salt Lake City, UT 84180

35  
36          Robert S. Lynch  
37          Arizona Transmission Dependent Utility Group  
38          340 E. Palm Lane, Ste. 140  
39          Phoenix, AZ 85004-4529

40  
41          Dennis L. Delaney  
42          KR Saline & Associates  
43          160 N. Pasadena, Ste. 101  
44          Mesa, AZ 85201-6764

MUNGER CHADWICK, P.L.C.  
ATTORNEYS AT LAW  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Thomas L. Mumaw  
Jeffrey B. Guldner  
SNELL & WILMER  
One Arizona Center  
Phoenix, AZ 85004  
Arizona Public Service Company

Michael L. Kurtz  
BORHM, KURTZ & LOWRY  
36 E. Seventh Street, Ste. 2110  
Cincinnati, OH 45202

C. Webb Crockett  
Jay L. Shapiro  
FENNEMORE CRAIG  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012-2913

Larry F. Eisenstat  
Frederick D. Ochsenhirt  
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP  
2101 L Street, NW  
Washington, DC 20037

Karen L. Peters  
Squire snaders & Dempsey, LLP  
40 N. Central Suite 2700  
Phoenix, Arizona 85004-4440

Paul R. Michaud  
Martinez & Curtis, P.C  
2712 N. Seventh St.  
Phoenix, Arizona 85006-1003

By \_\_\_\_\_