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BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	DOCKET NO. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	DOCKET NO. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES	DOCKET NO. E-01933A-98-0471
ISSUES 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

RESPONSE OF PANDA GILA RIVER, L.P. TO MOTION OF ARIZONA PUBLIC SERVICE COMPANY FOR DETERMINATION OF THRESHOLD ISSUE

Panda Gila River, L.P. ("Panda") submits this Response to the Motion of Arizona Public Service Company ("APS") for Determination of Threshold Issue ("Motion") filed on April 19, 2002. APS's filing makes it clear that the Commission should stay the procedural schedule in the above-captioned proceedings and immediately establish

procedures to resolve fundamental questions regarding restructuring of the Arizona electric market.

I. INTRODUCTION

APS argues in its Request for Partial Variance filed in Docket No. E-01365A-01-822 that, because there are insufficient competitive generators willing and able to supply power to APS's Standard Offer Service requirements, APS should not have to comply with the competitive bidding requirements of Rule 1606(B). For the reasons stated in its Request for Order to Show Cause, filed on March 19, 2002, Panda believes that the only appropriate way for the Commission to determine if sufficient generators are ready and able to meaningfully compete for APS's Standard Offer Service requirements is for APS to immediately issue a Request for Proposals ("RFP") for delivery beginning in 2003, as required by Rule 1606(B). If APS were receives sufficient *bona fide* offers in response to its solicitation, the Commission could legitimately conclude that the requested variance is unwarranted, thus obviating the need for a hearing in this matter..

In its April 19 Motion, APS now requests that the Commission "decide [certain] critical threshold issues" relating to the future of electric market restructuring in Arizona. Panda believes that there is no need for the Commission to reexamine its determination to rely on open, competitive markets, as little has changed since the Commission originally determined that competitive wholesale and retail electric markets were in the public interest. Indeed, APS itself continues to profess its support of electric restructuring, arguing that the requested variance, for example, only was intended to reexamine "how much" its Standard Offer Service requirements should be competitively procured, and "how fast". Motion at 2. Nevertheless, in the spirit of compromise and in the interest of preserving Commission and party resources, Panda proposes that the Commission (1) immediately issue a procedural schedule along the lines discussed below, for expeditiously considering certain global issues; (2) issue a final determination on three such threshold

issues, namely (a) divestiture or transfer of assets; (b) competitive bidding and (c) transmission constraints, no later than December 31, 2002; (3) stay the hearing in the APS variance proceeding pending resolution of these threshold issues; and (4) require that APS issue an RFP for Standard Offer Service deliveries commencing July 1, 2003, no later than 30 days after the Commission's final determination on the competitive bidding process (which would determine, among other issues, the amount to be solicited).

II. THE COMMISSION SHOULD STAY THE HEARING IN THIS MATTER AND SET A SCHEDULE IN THE GENERIC DOCKET.

APS urges the Commission to address quickly the "fundamental policy choice" of whether to proceed as initially contemplated with its restructuring of wholesale and retail electric markets in Arizona, and avoid being diverted by the details of a given approach. Put simply, "the fundamental policy choice . . . either needs to be reconfirmed or, with appropriate consideration, reversed." Motion at 3.

Surely, though, if the Commission were to reverse its original determination, prohibit APS from divesting its plants, and revert to traditional cost-of-service ratemaking, there would be little reason to proceed with APS's variance request in which APS proposes not only that the Commission severely modify the Competition Rules, but that it also approve a 28 year PPA that itself is contingent on the divestiture. If, on the other hand, the Commission were to reconfirm its belief in wholesale and retail competition, and maintain, or even modify somewhat the Competition Rules, the variance request might not ever be necessary if, for example, the Commission were to conclude in the generic proceeding that it should significantly reduce the percentage of APS's Standard Offer Service requirements that were required to be competitively secured. In either case there would be no reason to divert resources from the generic proceeding to hold a hearing on the variance request if a final decision on the threshold issues in the generic proceeding could well make the variance proceeding moot (one way or the other).

It follows that Panda respectfully requests that the Commission stay the procedural schedule in the APS variance docket and implement a schedule in the generic proceeding allowing for a final decision on the threshold questions identified above by the end of the year. Any other issues that the Commission wishes to address would be considered after the threshold issues are resolved. Assuming the Commission decides to proceed with its electric restructuring, APS would then issue an RFP consistent with the terms determined in the generic proceeding. If it still were necessary, the Commission could consider APS's variance request as early as 1/1/03, as the request would be stayed, not dismissed.

III. PROPOSED SCHEDULE FOR THE GENERIC PROCEEDING

In the generic docket, the Commission should attempt to resolve by December 31, 2002 each of the issues raised in the March 22, 2002 Staff Report in the Generic Electric Restructuring Docket ("Staff Report"). *See* Staff Report at 68-69. Specifically, the Commission should address the following:

1) Market power and market monitoring. To what extent and in what way should the Commission be involved in monitoring market conditions and/or mitigating the development of market power for generation and transmission?

2) The competitive bidding process. What rules should be put in place that provides utilities appropriate latitude in making prudent purchases on behalf of their standard offer customers? What should be included in an RFP? Who should review the draft RFP to ensure it complies with these rules? What, if any, modification of Rule 1606(B) is appropriate, including the percentage of Standard Offer Service requirements that must be competitively bid and the timing of the solicitation?

3) Transfer and separation of assets. Will the transfer of assets required by the Retail Competition Rules mitigate market power? If the generation assets are transferred to an affiliate, will the assets be outside of the Commission's jurisdiction, allowing the market power of incumbent utilities to go unmitigated? Should the

Commission require the transfer of assets to a functionally (but not legally) separate entity within the utility or require the sale or transfer of generation assets to non-affiliated companies?[1]

4) Transmission constraints. To what extent, if any, do transmission constraints (and the resulting must-run requirements) impact the development of the wholesale market for power?

5) Adjustor mechanisms for standard offer service. Given the answers to the other issues addressed in the generic docket, to what extent, if any, should the Commission reassess the need for an adjustor mechanism?

6) Shopping credits and unbundling generally. The adequacy of the shopping credit (the cost a customer would not pay to their UDC if they take generation service from a competitor) has been identified as being highly significant in the development of a competitive retail market. Are the shopping credits and unbundled rates now in effect, such as they are, set at levels that are artificially high or low?

Panda believes that, under a modestly expedited procedural schedule, the Commission could decide all of these issues by the end of 2002, especially if, as seems likely, responses to the Staff Report show areas of consensus among market participants. However, if consideration of each of these issues (and any others the Commission deems necessary) cannot be concluded in an expedited fashion, the Commission should resolve to address by the end of the year the transfer of generating assets by utilities, the competitive bidding process and transmission constraints, leaving the remaining issues for later determination.

To this end, Panda proposes that the Commission implement the following schedule, which allows for a final decision in the generic docket by December 31, 2002:

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[1] The Commission could consider in the generic docket APS's arguments that any change to Rule 1615, governing separation of APS's generation assets, would amount to a breach of the 1999 Settlement Agreement, entitling APS to "just compensation." Motion at 8-9. In any event, although the schedule proposed by Panda permits the divestiture issue to be resolved no later than the end of 2002, Panda would not object to this issue being resolved more quickly.

Procedural Conference to establish dates for future action, including responses to Commission Staff Report	Within 2 weeks of Commission order and notice of such conference in response to this request
Comments of all parties on Staff Report	May 31, 2002
Reply Comments of all parties	July 1, 2002
Procedural Conference to determine all issues for Commission disposition	July 15, 2002
Commission meetings (or hearings) on all issues	August 5-7, 2002
Commission Order resolving all outstanding issues (or at least the three threshold issues)	No later than December 31, 2002
APS issues RFP for service to commence July 1, 2003	No later than January 31, 2003

Under this schedule, utilities subject to the Competition Rules (including APS and Tucson Electric Power Company ("TEP")) would transfer their generation assets and issue RFPs no later than January 2003. Both the competitive solicitation and the asset transfer would be subject to the rules established in the generic docket.

This proposal is largely consistent with the proposal set forth in APS's Motion. Under APS's proposal,[2] the RFP would be issued in September 2002; Panda proposes an RFP only four months later. APS also proposes that the Commission address, in the generic proceeding, the six issues set forth above, Motion at 9-12, and plainly recognizes the utility in doing so prior to its issuing an RFP.

APS does, however, argue that the Commission should consider its variance request as scheduled, and that there be no delay in the hearing set to begin April 29, 2002. It makes little sense, however, to hold a hearing that may not even be necessary. Moreover, unless the Commission were to order APS to pursue an RFP immediately, the best way to resolve the competitive issues raised in the variance request is through the

[2] Motion at 4-5.

generic proceeding. Indeed, if the Commission were to order a return to traditional regulation, there would be no Competition Rules from which to request a variance; and, assuming that the Commission wished to maintain its restructuring agenda, it could determine in the generic proceeding how best to resolve all statewide competitive issues, including how much, if any, Standard Offer Service requirements should be procured through an RFP and the rules for and timing of such procurement, obviating the need for considering either APS's or TEP's variance request. If, on the other hand, problems were to arise in the competitive solicitation process such that it made sense to again consider APS's variance request, the Commission could consider the variance request at that time, having already resolved APS's and Staff's "threshold issues," with no appreciable delay from APS's proposed schedule.

In short, unless the Commission is inclined to immediately go forward with an RFP as Panda has previously requested, Panda's proposal herein is a reasonable compromise that allows the Commission to implement competitive wholesale and retail markets largely on the schedule originally set forth in the 1999 APS and TEP Settlement Agreements, without causing any of the financial uncertainty that APS suggests has threatened the bond ratings of APS and its affiliates.

IV. CONCLUSION

For the reasons discussed herein, the Commission should immediately stay the procedural schedule in effect regarding the APS and TEP variance requests. In addition, the Commission should establish a procedural schedule in the generic docket allowing for resolution of outstanding global issues regarding competitive markets by December 31, 2002, with competitive supply of Standard Offer Service requirements to commence no later than July 1, 2003. To assist the commission in this regard, a proposed form of order is attached hereto.

RESPECTFULLY SUBMITTED this 23rd day of April, 2002.

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606	DOCKET NO. E-01345A-01-0822
IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	DOCKET NO. E-00000A-01-0630
IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES	DOCKET NO. E-01933A-98-0471
ISSUES 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

OPINION AND ORDER

On December 26, 1996, in Decision No. 59943, the Arizona Corporation Commission ("Commission") adopted rules, which provided the framework for the introduction of retail electric competition in Arizona. These rules are codified at A.A.C. R14-2-1601 et seq. ("Rules" or "Electric Competition Rules"). Under the Rules adopted in December 1996, competition in the retail electric industry was to be phased-in beginning

in January 1999.

The Commission adopted certain modifications to the Electric Competition Rules on an emergency basis on August 10, 1998, in Decision No. 61071 (the "Emergency Rules"). On December 11, 1998, in Decision No. 61272, the Commission adopted the Emergency Rules on a permanent basis. On January 11, 1999, the Commission issued Decision No. 61311 which stayed the effectiveness of the Rules and related Decisions, and ordered the Hearing Division to begin consideration of further comment and actions in the Docket. On April 23, 1999, the Commission issued Decision No. 61634, in which the Commission adopted modifications to the Electric Competition Rules ("Revised Rules").

On September 29, 1999, the Commission issued Decision No. 61969, in which the Commission adopted additional revisions to the Revised Rules. On October 6, 1999, the Commission issued Decision No. 61973, in which the Commission approved a Settlement Agreement entered into by Arizona Public Service Company ("APS") and certain other enumerated parties, which, among other things, extended the date for commencement of competition until January 1, 2003. On November 30, 1999, the Commission issued Decision No. 62103, in which the Commission approved a Settlement Agreement entered into by Tucson Electric Power Company ("TEP"), which, among other things, extended the date for commencement of competition until January 1, 2003.

On October 18, 2001, APS filed a "Request For Variance Of Certain Requirements Of A.A.C. 4-14-2-1606" in Docket No. E-01345A-01-0822, seeking a variance from Rule 1606(B), which requires Arizona utilities to procure power necessary to provide service to Standard Offer Service customers from the competitive market, with at least half coming from competitive bidding. APS further requested Commission approval of a Purchase Power Agreement with its affiliate, Pinnacle West Capital Corporation.

On January 28, 2002, TEP filed an "Application for a Variance of Certain Electric Power Competition Rules Compliance Dates" in Docket No. E-01933A-02-0069, seeking

a delay in implementation of Rules 1606(B) and 1615(A).

The APS and TEP variance requests were assigned to the Commission's Hearings Division, with hearings set to commence April 29, 2002 for APS and June 10, 2002 for TEP.

On January 14, 2002, Chairman Mundell issued a letter to Commissioners Irvin and Spitzer and all interested parties concerning opening a forum for discussion of "developing issues in electric restructuring" and posing questions regarding restructuring for interested parties to answer. On January 22, 2002, Commissioner Spitzer issued additional questions. On January 22, 2002, Judge Farmer issued a Procedural Order opening a generic docket to address developing issues in electric restructuring, and requiring interested parties to respond to the Commission's questions by February 25, 2002. On February 8, 2002, Commissioner Irvin issued additional questions.

By Procedural Order issued February 8, 2002, the Commission consolidated Docket Nos. E-00000A-02-0051, E-01345A-01-0822, E-00000A-01-0630, E-01933A-98-0471 and E-01933A-02-0069..

On March 19, 2002, Panda Gila River, L.P. ("Panda") filed a "Request for Order to Show Cause," requesting that the Commission stay the procedural schedule in Docket No. E-01345A-01-0822 and issue an Order directing APS to Show Cause why it should not be directed to immediately issue a competitive solicitation for 50% of its Standard Offer Service Requirements, pursuant to Rule 1606(B). APS filed a response to Panda's Request on March 29, 2002. Interested parties filed replies to APS's response and Panda's Request on April 5, 2002. A Special Open Meeting regarding the Request is scheduled for April 25, 2002.

On March 22, 2002, Commission Staff filed a "Staff Report in the Generic Electric Restructuring Docket," pursuant to the Commission's February 8, 2002 Procedural Order.

On April 19, 2002, APS filed a "Motion for Determination of Threshold Issue,"

requesting that the Commission implement a schedule in the generic docket for consideration of certain issues regarding electric restructuring. On April 23, 2002, Panda filed a Response to APS's Motion, requesting that the Commission stay the proceedings regarding APS's and TEP's variance requests and implementing a schedule in the generic docket for resolution by December 31, 2002, with competitive solicitations to be issued in January 2003 for delivery beginning on July 1, 2003.

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Decision No. 59943 enacted R14-2-1601 through -1616, the Retail Electric Competition Rules.

2. Decision No. 61071 (August 10, 1998) adopted certain modifications to the Retail Electric Competition Rules and conforming changes to R14-2-203, R14-2-204 and R14-2-208 through R14-2-211 on an emergency basis.

3. Decision No. 61272 (December 11, 1998) adopted the Emergency Rules on a permanent basis, including Staff's additional changes proposed on November 24, 1998.

4. Decision No. 61311 stayed the effectiveness of the Emergency Rules and related Decisions, and ordered the Hearing Division to conduct further proceedings in this Docket.

5. In Decision No. 61634 (April 23, 1999), the Commission adopted the Revised Rules, which revised R14-2-201 through -207, -210 and -212 and R14-2-1601 through -1617.

6. In Decision No. 61969, the Commission adopted revisions to the Rules, which revised R14-2-203 and -209, and R14-2-1601, -1603 through -1606, -1609, -1611 through -1613, and –1615 through -1617.

7. In Decision Nos. 61973 and 62103, the Commission extended the date for

commencement of competition in Arizona until January 1, 2003.

8. APS and TEP have requested variances from the Competition Rules, seeking modification of their obligations to competitively procure power to satisfy their Standard Offer Service requirements and their obligation to transfer ownership of their generation assets.

9. The Commission should resolve certain threshold issues related to electric restructuring, including market power and market monitoring, rules for competitive bidding, rules for transfer of generation assets by utilities, the impact of transmission constraints on competition, adjustor mechanisms for standard offer service and competitive shopping credits and other issues related to retail competition.

10. The Commission should resolve these threshold issues before commencing any hearing on the APS or TEP variance requests.

CONCLUSIONS OF LAW

1. The Commission has authority to modify the Competition Rules or the structure of the Arizona electric market pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-202, 40-203, 40-250, 40-321, 40-322, 40-331, 40-332, 40-336, 40-361, 40-365, 40-367 and A.R.S. Title 40, generally.

2. Consideration of threshold issues related to electric restructuring in Arizona is in the public interest.

3. Establishing a schedule for resolution of threshold issues through submission of written comments by interested parties and participation in hearings, workshops or conferences is in the public interest.

ORDER

IT IS THEREFORE ORDERED THAT the procedural schedules previously established in these consolidated dockets are immediately and indefinitely stayed.

IT IS FURTHER ORDERED THAT the Chief Administrative Law Judge shall

establish a procedural schedule in Docket No. E-00000A-02-0051 to consider the following issues:

1. Market power and market monitoring;
2. Guidelines for competitive bidding pursuant to Rule 1606(B);
3. Rules for transfer of generation assets by utilities;
4. Impact of transmission constraints on wholesale competition;
5. Adjustor mechanisms for standard offer service; and
6. Competitive shopping credits and other issues related to retail competition.

IT IS FURTHER ORDERED THAT the procedural schedule adopted by the Chief Administrative Law Judge shall adhere generally to the schedule attached hereto as Appendix A, allowing for a Commission Order by December 31, 2002.

IT IS FURTHER ORDERED THAT any competitive solicitation pursuant to Rule 1606(B) shall commence no later than January 31, 2003, with delivery to commence no later than July 1, 2003.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

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