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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 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	DOCKET NO. E-00000A-01-0630
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

NOTICE OF SUBSITUTION

Arizona Public Service Company ("APS" or "Company") hereby submits a substitute copy of the Motion for Protective Order that was filed with the Arizona Corporation Commission on October 31, 2002. The original pleading that was filed inadvertently omitted several exhibits. A corrected copy of the pleading with all exhibits is attached hereto.

RESPECTFULLY SUBMITTED this 1st day of November 2002.

SNELL & WILMER

By: _____
Jeffrey B. Guldner, Esq.

and

PINNACLE WEST CAPITAL
CORPORATION LAW DEPARTMENT

By: _____
Thomas L. Mumaw, Esq.
Karilee Ramaley, Esq.

Attorneys for Arizona Public Service Company

The original and 10 copies of the foregoing were filed this 1st day of November, 2002 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007.

Copies of the foregoing mailed, faxed or transmitted electronically this 1st day of November, 2002 to:

All parties of record.

Vicki DiCola

Vicki DiCola

1262813.3

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
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ARIZONA PUBLIC SERVICE COMPANY'S MOTION FOR PROTECTIVE ORDER IN TRACK B

Arizona Public Service Company ("APS" or "Company") hereby submits this Motion for Protective Order to prevent the disclosure of confidential operating and market-related information to Panda Gila River, L.P., ("Panda") and potentially other merchant power plant parties ("Merchant Intervenors") who are competitors of APS and prospective bidders in Track B. This Motion is submitted as a response to Panda's First Set of Data Requests to APS in Track B, which have requested, among other things,

information regarding APS' marginal generating costs, projected APS unit performance and costs, APS wholesale market price forecasts, and the Company's economic dispatch software and process.[1] A copy of the Data Request and APS' objections thereto are attached at Exhibit A and B, respectively.

Because APS will solicit purchases from Panda or other Merchant Intervenors in the competitive bidding process established in Track B and/or on a real-time or short-term basis outside Track B, (*see* Staff Report at 4), access by the Merchant Intervenors to such market and cost information would adversely affect bids submitted to APS. This fact and the competitively-sensitive nature of such information was specifically recognized by Staff in developing its Track B proposal, which provides that:

> Price and cost forecasts for power supplies and fuel costs prepared by, or available to the utility, <u>will not</u> be made available to the bidders.

(Staff Report on Track B, at p. 13.) APS does not object to providing such information to Staff, the Independent Monitor, or RUCO, if requested, as they are not competitors of APS.

Therefore, APS respectfully requests that the Administrative Law Judge ("ALJ") enter an Order preventing disclosure of confidential cost and market-related information to the Merchant Intervenors in this proceeding. A proposed order is attached as Exhibit C. This Motion is supported by the following Memorandum of Points and Authorities and by the Affidavit of Tom Carlson, which is attached as Exhibit D.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE COMMISSION SHOULD PROTECT THE BUYER'S CONFIDENTIAL AND COMPETITIVELY- SENSITIVE MARKET AND COST INFORMATION FROM DISCLOSURE TO THE SELLERS.

The Commission clearly has the authority to protect confidential and

[1] Panda has also challenged certain other of APS' objections, which APS anticipates will be addressed separately from this Motion to the extent that Panda wishes to pursue them.

competitively-sensitive information of regulated public service corporations from disclosure to competitors in the Track B competitive bidding process. In Track B and in procurements in the short-term and real time markets, APS will be a buyer and the Merchant Intervenors will be sellers. Further, in the real time and short-term markets, APS will be procuring economy energy, which is energy that can be provided by a seller at a price less than the dispatch cost of APS' next merit-order generating unit.

APS is also a seller of energy on the competitive wholesale market. Such sales are based largely on the sort of marginal cost dispatch and price forecast information sought by Panda.

Clearly, if Panda is provided access to APS' wholesale power market forecasts (Data Request 1-18), it (the seller) will know what APS (the buyer) expects to be a reasonable price and this will affect the bids that Panda is willing to submit in Track B. Economy purchases are similar. If the sellers (such as Panda) know the costs of each APS unit and APS' economic dispatch process and model, they will know the generation price that APS is attempting to beat in the real time market and bids will be skewed towards that price, rather than reflecting the price that the generators would have offered not knowing APS' "price to beat." By analogy, it is similar to a buyer who is looking at a new home telling a prospective seller how high they can go to purchase the home before starting the negotiations. And, in the similar case of APS selling wholesale power, the release of this information is akin to a homeowner (the seller) telling prospective buyers the lowest price that the homeowner is willing to accept for their home—an action that would unquestionably taint the prices that buyers are willing to offer the seller.

The need to protect such competitively-sensitive market-related information is clearly embodied in the Staff Report on Track B, and in Staff's proposal for the competitive solicitation. That report provides that all forecasts, which are to be provided to Staff and the Independent Monitor, "will remain confidential ..." (Staff Report, at p.

15). The Staff Report also provides that price and cost information from the utilities "will not be made available to bidders." (*Id.* at p. 13.) Further, Staff Report allows bidders to review "non-proprietary materials" produced by the utility not 'all' materials. (*Id.* at p. 9.)

Moreover, Panda's alleged need for this competitively-sensitive information is by no means ripe. Panda's argument as to why the pricing information is relevant depends on the Commission accepting their argument in Track B that the amount of competitive procurement must be more than proposed by the Staff Report and must include forward contracting for economy energy purchases. If the Commission rejects this threshold position and approves the Staff Report, the information that Panda is seeking relating to economy purchases and dispatch modeling would be moot. If the Commission were to accept Panda's argument, the specific amount energy and capacity could be determined along with the Independent Monitor when APS' needs assessment is revised. Even in this case, however, it would be necessary to protect this information from disclosure to potential bidders.

II. THE RULES OF CIVIL PROCEDURE ALLOW THE COMMISSION TO PROTECT AGAINST THE DISCLOSURE OF COMPETIVELY-SENSITIVE INFORMATION

The need to limit discovery of competitively sensitive information is recognized under the Arizona Rule of Civil Procedure. Rule 26(c)(7) specifically provides for the protection against the disclosure of confidential information when managing discovery in a litigated proceeding. Ariz. R. Civ. P. 26(c)(7). The pertinent portions of Rule 26(c), Ariz. R. Civ. P., provide:

> [T]he Court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense, including one or more of the following: . . . (7) that a trade secret or other confidential research, development or commercial information <u>not be disclosed</u> or be disclosed only in a designated way. [Emphasis added.]

When the production of confidential information to a competitor may adversely affect the disclosing party, courts have invoked Rule 26(c) to prohibit or severely restrict disclosure. *See, e.g., Tonnemacher v. Sasak*, 155 F.R.D. 193, 194-95 (D. Ariz. 1994) (applying the equivalent federal rule); *Wang Lab v. CFR Assocs.*, 125 F.R.D. 10, 13 (D. Mass. 1989) (same).[2] The result with respect to the Track B process should be no different.

The Commission has incorporated Rule 26 by reference into the Commission's Rules of Practice and Procedure. A.A.C. R14-3-101(A). Thus, the ALJ has broad discretion to appropriately apply Rule 26(c)—including limiting disclosure only to the ALJ for *in camera* consideration. *See Ronson Corp. v. Liquifin Aktiengesellschaft*, 370 F. Supp. 597, 600-01 (D.N.J. 1974) (limiting confidential commercial information to *in camera* inspection by judge). In this case, consistent with this authority and the discretion of the ALJ, disclosure of competitively-sensitive, market-related information should be limited to non-competitors such as Staff and RUCO. For the reasons discussed above, such a limitation is necessary to protect the integrity not only of the competitive bidding process in Track B, but also APS' future procurement from Merchant Intervenors in the real-time and short-term markets. Such a limitation is also consistent with the process that was developed in the Track B workshops and which is reflected in the current Staff Report.

III. CONCLUSION.

Given the adverse impacts to APS that will result if the disclosure of competitively-sensitive, market-related information to Merchant Intervenors is allowed, the ALJ should limit disclosure of such information only to Staff (including the Independent Monitor when appointed) and RUCO through a Protective Order.

[2] Although generally not bound by decisions, Arizona courts look to federal opinions for guidance. *See Cornet Stores v. Superior Court*, 108 Ariz. 84, 86 492 P.2d 1191, 1193 (1972).

Accordingly, APS respectfully requests that the Commission enter the form of Protective Order attached hereto.

RESPECTFULLY SUBMITTED this 1st day of November 2002.

SNELL & WILMER

By: Jeffrey B. Guldner, Esq.

and

PINNACLE WEST CAPITAL CORPORATION LAW DEPARTMENT

By: Thomas L. Mumaw
Thomas L. Mumaw, Esq.
Karilee Ramaley, Esq.

Attorneys for Arizona Public Service Company

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Vicki DiCola
Vicki DiCola
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October 22, 2002

Jeffrey B. Guldner, Esq.
Snell & Wilmer
400 East Van Buren
One Arizona Center
Phoenix, Arizona 85004-2202

Re: Panda Gila River, L.P. First Set of Data Requests to APS, Docket No. E000000A-02-051 (Track B)

Dear Mr. Guldner:

Attached please find the First Set of Data Requests from Panda Gila River, L.P. ("PGR") to Arizona Public Service Company ("APS") in the above-referenced matter. Please provide a copy of APS's responses to each of the following individuals:

Jay L. Shapiro
Fennemore Craig, P.C.
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012
Facsimile: (602) 916-5999
jshapiro@FCLAW.com

Michael R. Engleman
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037
(202) 95-6676
Facsimile: (202) 887-0689
Englemanm@dsmo.com

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

[signature in original]

Larry F. Eisenstat
Michael R. Engleman
Frederick D. Ochsenhirt
Dickstein Shapiro Morin & Oshinsky LLP
Attorneys for TPS GP, Inc.

Jay L. Shapiro
Patrick Black
Fennemore Craig, P.C

Attorneys for Panda Gila River, L.P.

I. INSTRUCTIONS AND DEFINITIONS

A. Instructions

1. These Data Requests and Document Production Requests call for all information, including information contained in documents or stored on computer disks or in computers, which relate to the subject matter of the Data Requests and that is known or available to you.

2. If the Request calls for documents or other information that were originally provided in electronic format, provide the documents or other information in electronic format by electronic mail and/or on clearly-labeled computer diskettes or CD-ROMs.

3. In answering these Requests, Respondent is requested to furnish such information as is available to Respondent, including information that Respondent is able to obtain by due diligence from Respondent's present or former employees, accountants, investigators, consultants, witnesses, agents, or other persons acting on Respondent's behalf.

4. Where a Data Request has a number of separate subdivisions or related parts or portions, a complete response is required to each such subdivision, part, or portion. Any objection to a Data Request should clearly indicate the subdivision, part, or portion of the Data Request to which it is directed.

5. If a Data Request specifically requests an answer in response rather than the production of documents, an answer is required. The production of documents will not suffice.

6. These Data Requests are continuing in nature and require supplemental responses when further or different information with respect to the same is obtained.

7. Each response should be furnished on a separate page headed by the individual Data Request being answered. Individual responses of more than one page should be stapled or bound and each page consecutively numbered.

8. For each document produced or identified in a response to a Document Production Request that is computer generated, state separately: (a) what types of data, files, or tapes are included in the input and the source thereof; (b) the form of the data that constitutes machine input (e.g., punch cards, tapes); (c) a description of the recordation system employed (including program descriptions, flow charts, etc.); and (d) the identity of the person who was in charge of the collection of input materials, the processing of input materials, the data bases utilized, and the programming to obtain the output.

9. If a Data Request can be answered in whole or in part by reference to the response to another Data Request served in this proceeding, it is sufficient to so indicate by specifying the other Data Request by participant and number, by specifying the parts of the other response that are responsive, and by specifying whether the response to the other Data Request is a full or partial response to the instant Data Request. If it constitutes a partial response, the balance of the instant Data Request must be answered.

10. If you cannot answer a Data Request in full after exercising due diligence to secure the information necessary to do so, state the answer to the extent possible, state why you cannot answer the Data Request in full, and state what information or knowledge you have concerning the unanswered portions.

11. If, in answering any of these Data Requests, you feel that any Data Request or definition or instruction applicable thereto is ambiguous, set forth the language you feel is ambiguous and the interpretation you are using in responding to the Data Request.

12. If a document requested is unavailable, identify the document, describe in detail the reasons the document is unavailable, state where the document can be obtained, and specify the number of pages it contains.

13. If you assert that any document has been destroyed, state when and why it was destroyed, and identify the person who directed the destruction. If the document was destroyed pursuant to your document destruction program, identify and produce a copy of the guideline, policy or company manual describing such document destruction program.

14. If you refuse to respond to any Data Request by reason of a claim of privilege or for any other reason, state in writing the type of privilege claimed and the facts and circumstances you rely upon to support the claim of privilege or the reason for refusing to respond. With respect to requests for documents to which you refuse to respond, identify each such document, and specify the number of pages it contains.

15. If no document is responsive to a Data Request that calls for a document, then so state. In each instance, the Data Request should be treated as an interrogatory.

B. Definitions

1. The words "and" and "or" should be construed either conjunctively or disjunctively as necessary to include information within the scope of a Request, rather than to exclude information therefrom.

2. "ACC" means the Arizona Corporation Commission and is used interchangeably with "Commission."

3. An "Affiliate" with regard to any person means another person which controls, is controlled by, or is under common control with, such person.

4. "APS" means Arizona Public Service Company, its employees, agents, consultants, representatives, attorneys, officers, Directors, and any other person acting on behalf of APS.

5. "APS' needs assessment and procurement proposals" mean the minimum amount of power, the timing, and the form of procurement required by Decision No. 65154.

6. "APS' resources" means APS' generation assets as defined in the Track A Order.

7. "Co-location" means that units owned by APS and non-APS entities are located at the same general site.

8. "Control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a presumption of control.

9. The term "correspondence" should be interpreted to include, but not be limited to, all letters, telexes, facsimiles, telegrams, notices, messages, memoranda, e-mail communications and attachments, and other written or electronic or computer generated communications.

10. "Document" means

a. "Documents" refers to all writings and records of every type in your possession, control, or custody, including but not limited to: e-mail communications, PowerPoint presentations, testimony, exhibits, memoranda, correspondence, letters, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data, computer files, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets, work papers, engineering diagrams

(including "one-line" diagrams), mechanical and electrical recordings, records of telephone and telegraphic communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above.

b. "Document" includes copies of documents, where the originals are not in your possession, custody, or control.

c. "Document" includes every copy of a document that contains handwritten or other notations or that otherwise does not duplicate the original or any other copy.

11. "Document" also includes any attachments or appendices to any document.

12. "Financing Application" and "Application" refers to the September 16, 2002, Application filed by APS requesting the ACC to allow APS to borrow up to $500 million and to lend the proceeds to PWEC; to guarantee up to $500 million of PWEC's debt; or a combination of both, not to exceed $500 million in the aggregate, and various other relief..

13. "Identify" when used in referring to a person, shall mean to state the following with regard to the person: (a) name; (b) last known address; (c) residence and business telephone numbers; (d) relationship to you; and (e) occupation at the date of these interrogatories.

14. The terms "identify" and "identity" with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and its present custodian. If any such document was in APS's possession or subject to its control, but is no longer, state what disposition was made of it and explain the circumstances surrounding, and the authorization for, such disposition, and state the date or approximate date of such disposition.

15. "Person" means, without limiting the generality of its meaning, every natural person, corporation, partnership, association (whether formally organized or ad hoc), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or other organization.

16. The words "power," "energy," and "electricity" shall be constructed to include, but not be limited to, capacity, energy, ancillary services, and losses. Provide all information in MWs.

17. "PWCC" means Pinnacle West Capital Corporation, its employees, agents, consultants, representatives, attorneys, officers, Directors, and any other person acting on behalf of PWCC.

18. "PWEC" means Pinnacle West Energy Corporation, its employees, agents, consultants, representatives, attorneys, officers, Directors, and any other person acting on behalf of PWEC.

19. "PWEC Assets" refers to West Phoenix CC Units 4 and 5, Redhawk Units 1 and 2, and Saguaro CT Unit 3.

20. The terms "related" or "related to" should be interpreted to include every document describing, discussing, analyzing, referring to, associated with, or bearing a relationship to the subject matter of the Request. A document is "related to" a certain subject matter if the subject matter is described, discussed, or referenced at any place in the document and even if the subject matter is not a major focus on the document.

21. "Unmet needs" means the amount of power which the Arizona Corporation Commission has required APS to procure through a competitive bid process, the Track A order clarified that this amount was calculated as any required power that cannot be produced from APS' own existing assets.

22. "The Valley" means the Metropolitan Phoenix Area as discussed by APS witness Cary Diese in Rebuttal Testimony dated June 11, 2002

II. DATA REQUESTS

1-1. Please provide copies of any and all documents relied upon by APS in its estimation of APS' unmet needs.

1-2. Provide the Promod IV ™ dataset and any post-processing tools used or that will be used to perform economic evaluations of alternative generation supply options.

1-3. Provide the following historical information for the period 1991-2001:

a. actual peak demand and energy
b. Comparison of forecast and actual peak demand and energy for each year
c. Actual key economic indicators used to develop the load forecast (including but not limited to historical and forecasted load growth by customer class)
d. Comparison of forecast and actual key economic indicators used to develop the load forecast (including but not limited to historical and forecasted load growth by customer class)

1-4. Provide the following projected information for the period 2003-2012:

a. monthly peak demand forecast
b. monthly energy forecast
c. Customer mix by class including average load factor by month
d. Demand side management (conservation, load management, and interruptible supply) monthly verifiable installed capacity and limitations on dispatchable energy, by customer class
e. forecast of key economic indicators used to develop the load forecast (including but not limited to historical and forecasted load growth by customer class)
f. Forecasted hourly market prices for 2003-2012 used to determine economy and short-term sales and purchases
g. Reserve/reliability targets and obligation, including reliability criteria used for planning purposes
h. Example of reliability target calculation and explanation of how calculations are done including any exception to these calculations and when these exceptions apply

1-5. Provide the following transmission information for the period 2002-2012:

a. Transmission system base case in PTI format
b. List of planned or in progress upgrades or changes to system
c. Planning contingencies used for determining security constrained dispatch
d. Flowgate definitions and limitations used in reliability planning
e. Reliability criteria used to determine transmission additions and an explanation of application

f. Known transmission constraints effecting delivery of capacity and/or energy to utility service territory
g. Existing firm and "as available" transmission capacity reservations, including scheduling provisions, effective dates and historical usage.

1-6. With respect to the APS resources that APS reflects in the estimation of unmet needs as reducing APS's unmet needs:

a. Please provide the following information for each generating unit:

i. Unit name;
ii. Age of unit as of January 1, 2003
iii. Equipment type
iv. Installed capacity;
v. Summer and winter capacity;
vi. Fuel types, including historical (1991-2001) and forecasted (2003-2012) burn percents for multi-fuel units
vii. Expected retirement dates
viii. Limitations on dispatch, including environmental and fuel limits
ix. Heat rates (full load and average, historical and average)
x. Projected derations, including weather related
xi. Planned fleet upgrades, additions, modifications, repowerings, etc. for 2002 through 2012, including all of the above listed generation information applicable to the unit following such change
xii. Actual number operations of the facility for each of the past five years, including, but not limited to, number of hours dispatched each year, number of MWh generated and capacity factors; and
xiii. Projected operations for the facility in the next ten years, including, but not limited to, number of hours dispatched each year, number of MWh generated and capacity factors.
xiv. Projected outage schedule, including maintenance and forced outages, for the next ten years, together with historical data for the last five years.

b. If APS included any power purchase contracts (with affiliates or non-affiliates) in its estimation of APS resources, please provide a copy of the contract. In addition, to the extent not included in the contract itself, provide the following information:

i. Number of megawatts under the contract
ii. Type of contract
iii. The date the contract was signed, and, if applicable, the scheduled date of commercial operation for the power plants from which the power will be supplied.
iv. The contract term length
v. Scheduling requirement or limitation options and reserve obligation,

vi. Historical (1991-2001) and forecast (2003-2012) load factor by month
vii. For each generating facility, provide the actual operations of the facility for the past five years, as well as the projected operations for these plants in the next five years, including, but not limited to number of hours dispatched each year, number of MWh generated and capacity factors.
viii. Whether the contract provides for early termination and on what terms.

1-7. For each generating unit included in APS' assessment of unmet needs, provide the following fuel information:

a. Types of fuel used
b. Existing supply and transportation contracts, including fuel limits on an hourly, daily, monthly, annual, or other time period, as applicable
c. Historical transportation costs, by fuel, for 1991 through 2001
d. Forecasted transportation costs, by fuel, for 2003 through 2012
e. Historical commodity costs for 1991 through 2001
f. Forecasted commodity costs for 2003 through 2012.

1-8. Please provide copies of all retail load forecasts prepared by APS within the last three years. For each forecast, provide the following information:

a. any and all documents relied upon by APS in preparing the forecast;
b. State the difference between the forecasted loads as reported in the study and the actual load on the forecasted date.
c. If APS, over the past three years, has assessed the accuracy of its load forecasts as compared to actual peak load, provide that assessment.

1-9. Please provide the actual peak load for the entire APS territory and the Valley for each of the past three years.

1-10. Which, if any, generating units does APS plan to retire, place in cold storage, mothball, or otherwise remove from service within the next five years?

1-11. Over the last five years, what units has APS retired, placed in cold storage, or mothballed?

a. For each facility, provide the following information:

i. Unit name;
ii. Fuel type;
iii. Installed capacity;
iv. Summer and winter capacity; and
v. Commercial operation date.

b. Has APS restarted operations in any of the units referenced in the first portion of this request? If yes, please state which units and the date commercial operation restarted.

c. Has APS discussed or otherwise planned to restart operations for any of the units referenced in the first portion of this request? If yes, please state which units and the projected on-line date.

1-12. Has APS considered retiring plants because of the expense of maintaining compliance with environmental regulations, or to reduce emissions by retiring plants even though the plants currently meet environmental regulations? If yes, please provide copies of any and all documents, work papers, spreadsheets, studies, analyses and/or other materials relied upon or performed by APS relating to the termination.

1-13. Please provide a list of the generating units that are in the Valley (i.e. within the transmission constraint). Please identify those units that were designated as Reliability Must Run (RMR) units for 2002 and the past two years, as well as those projected to be designated as RMR in the next five years. For each APS RMR generating unit please state:

a. Ownership,
b. Installed, summer and winter capacity,
c. Total number of RMR hours in which it was called on to run,
d. The average production cost during RMR hours,
e. The hour-by-hour operations of these units including MW generated.
f. The projected operations for these units for the next five years.

1-14. Please identify all non-APS generating units of which APS is aware that became commercially operational in the Valley within the past two years, as well as those projected to be operational in the Valley in the next five years. For each, please state:

a. Ownership,
b. Installed, summer and winter capacity,
c. Total number of RMR hours in which it was called on to run,
d. The average production cost during RMR hours,
e. The hour-by-hour operations of these units including MW generated.
f. Please provide the projected operations for these units for the next five years.

1-15. Please provide all the transmission studies used in the estimation of unmet needs to determine transmission constraints into the APS system in general and into the Valley in particular. For the system in general and for the Valley in particular, please identify for each point of constraint the limit on imports for 2002 and for the next five years.

1-16. Has APS within the last five years performed a transmission study to determine the costs of relieving the import constraint into the Valley?

a. If yes, please provide copies of any and all documents relied upon by APS relating to the transmission study.
b. If no, please state the reason why no study was performed.

1-17. Please provide the following information regarding wholesale service by APS, including copies of any and all documents relied upon by APS in responding to this request:

a. Over the past three years, the amount of MW that APS served in each year.
b. Over the past three years, total hours in each year serving this load.
c. Generating units used to serve this load?
d. For the next five years, projected wholesale load will serve, by MW and hours per year; and
e. Generating units APS will use to serve the load.

1-18. Please provide any wholesale power market forecasts prepared by APS within the last three years, including copies of any and all documents relied upon by APS in preparing such forecasts.

1-19. Has APS, within the last five years, allowed for co-location of generating units. If yes, provide the following information:

a. Date(s) of co-location;
b. Name of facilities, including APS and co-located units
c. State with specificity each and every form of compensation received by APS for allowing co-location.

1-20. Are there any known physical constraints prohibiting co-location of additional facilities?

1-21. Please provide copies of any and all documents relied upon by APS relating to APS' needs assessments and procurement proposals. This information should include, but not be limited to:

a. The unit and fuel types that APS assumed in its analysis it will need to procure to meet peak demand.
b. The capacity factor for each unit (both APS and non- APS resources) and for each year analyzed in APS' needs assessments.
c. The factors and inputs that APS used to determine how each unit would be dispatched, (i.e. energy price, variable O&M, transmission costs, etc). For each factor and for each unit please state the prices used.

1-22. Within the last five years, has APS issued a Request For Proposals or other competitive solicitation? If yes, provide the following information:

a. Amount of megawatts solicited.
b. Method(s) were used to evaluate the proposals.
c. Name and company of the person that evaluated the proposals

d. If APS retained a third party to evaluate the proposals, please provide any and all documents relating to the evaluator's conclusions and recommendations.

1-23. Within the last five years, has APS administered an Auction for competitive supply of generation? If yes, provide the following information:

a. Amount of megawatts solicited.
b. Method(s) used to evaluate the proposals.
c. Name and/or party running the auction.
d. If APS retained a third party to evaluate the auction process, provide any and all documents relating to the evaluator's conclusions and recommendations.

1-24. Provide copies of any and all power supply contracts, agreements or other supply arrangements between APS and any affiliated company, including, but not limited to, Pinnacle West Energy Company during the last three years. For each such contract, provide the following information:

a. Name and owner of the generation facility;
b. Date contract executed;
c. Date, if any, contract was approved by any regulator;
d. Amount of MW covered by the contract;
e. Original termination date of the contract;
f. Renewal date of the contract, if any;
g. For each contract, provide the actual number of MWh supplied to APS under the agreement for each of the last three years and projected MWh to be supplied for each of the next five years.

1-25. For each of the contracts provided in response to the previous request, provide copies of any and all transmission service agreements under which the seller delivered power to APS. For each such service agreement, provide the following information:

a. Date of service agreement;
b. Termination date of agreement, and renewal date, if any;
c. Transmission capacity covered by contract;
d. Tariff provision or rate schedule under which service was provided.

1-26. Please provide a full and complete copy of APS' full requirements contract with El Paso Natural Gas Company ("El Paso"), including all amendments and exhibits thereto.

1-27. Please provide full and complete copies of all contracts that APS, Pinnacle West Capital Corporation ("PWCC"), Pinnacle West Energy Corporation ("PWEC"), or any other Pinnacle West affiliate or subsidiary has with El Paso, including all amendments and exhibits thereto.

1-28. Does APS intend to assign or otherwise transfer any or all of its rights and obligations under its full requirements contract with El Paso to PWEC or any other affiliate such that APS would no longer have any rights or obligations under the full requirements contract?

a. If so, please describe the circumstances under which such an assignment or transfer will be effectuated and whether APS will obtain Arizona Corporation Commission ("ACC") or Federal Energy Regulatory Commission ("FERC") approval in order to assign or otherwise transfer its rights and obligations under the contract.
b. If ACC and/or FERC approval will be required, please describe in detail under what ACC and/or FERC authority the full requirements contract will be assigned or otherwise transferred.

1-29. Have any of APS' rights and obligations under its full requirements contract with El Paso been assigned or otherwise transferred to PWEC or any other affiliate of APS?

a. If so, please describe how such an assignment was effectuated and whether APS required ACC or FERC approval in order to assign the contract.
b. If ACC and/or FERC approval was required, please describe in detail under what ACC and/or FERC authority the full requirements contract was assigned.

1-30. Please provide copies of all documents, including agreements, related to APS' assignment or transfer, or intended assignment or transfer, of its rights and obligations under APS' full requirements contract with El Paso.

1-31. Does PWEC or any other affiliate of APS have any rights or obligations under APS' full requirements contract with El Paso? If so, please describe such rights and obligations. Also provide all documents related to such rights and obligations.

1-32. Has APS, PWEC, PWCC, or any other APS affiliate used capacity on El Paso to transport gas to any of PWEC's generating stations, including, but not limited to West Phoenix 4 and Redhawk? If so, please provide the following information:

a. the dates on which the capacity was so used;
b. for each date, the daily volumes that were delivered to PWEC's generating stations;
c. for each date, whether the capacity used was firm or interruptible, and
d. for each date, the contract(s) with El Paso under which capacity was so used.

1-33. Does Pinnacle West Capital Corporation ("PWCC") act as an agent or asset manager for APS under APS' full requirements contract with El Paso?

a. If so, please describe PWCC's role in this regard.
b. Please provide copies of any agreements or other documents relating to or arising out of such an agency or asset management relationship.

1-34. Does APS contend that the APS full requirements contract with El Paso allows APS to designate non-APS owned generating facilities as points of delivery?

a. If yes, does APS contend that it can designate an unaffiliated merchant generator as a delivery point under the full requirements contract with El Paso so long as APS is acquiring the electrical output of the facility for its native load needs?
b. Does APS contend that the full requirements contract with El Paso allows APS, or its agent, to designate PWEC or other generation affiliated with APS as a delivery point under the full requirements contract so long as APS is acquiring the electrical output of the affiliated facility for its native load needs?

EXHIBITS

A

EXHIBITS

B

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October 29, 2002

VIA FACSIMILE AND MAIL

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Re: ***Docket No. E-00000A-02-0051 et al. (Track B)***
Panda Gila River, LP's First Set of Data Requests

Dear Messrs. Shapiro and Engleman:

Arizona Public Service Company ("APS" or "Company") hereby submits its objections to the referenced data requests, received on October 24, 2002.[1]

1. Preliminary Objections.

A. APS objects to the Instructions and Definitions provided with the data requests to the extent that such instructions and definitions are overly broad, unduly burdensome, and vague. APS will provide responses to the data requests in the manner that is customarily used at the Arizona Corporation Commission ("Commission"), which includes:

- The exercise of good faith inquiry of all relevant personnel and the exercise of reasonable due diligence to identify and provide information and materials responsive to the data request within the time allowed by the Procedural Order.

[1] The cover letter was dated October 22, 2002, but was e-mailed to APS on October 24, 2002.

- Full and fair responses to data requests requiring a narrative response, including clear and unambiguous cross-references when responses to other data requests are applicable.
- The provision of responsive information in an appropriate form (such as electronically for information retained electronically).
- Treatment of the data requests as continuing, and the provision of supplemental responses to provide additional responsive information when appropriate.
- A description of any interpretations used to questions that APS considers to be ambiguous.
- The exclusion of attorney-client privileged information and information covered by the attorney work product doctrine.

B. APS objects to the extent that any information requested calls for the production of attorney-client privileged materials or materials protected by the attorney work product doctrine.

C. APS objects to the extent that any information contains confidential information pending execution of a Protective Agreement, and further objects to the extent that any information contains confidential trade secret or competitively-sensitive information.

2. Specific Objections.

1-1 Object to the extent that the request to provide "any and all" documents is overly broad and unduly burdensome. Subject to such objections, APS will provide a response when it files workpapers associated with testimony on November 4, 2002.

1-2 APS does not use Promod IV™ but objects to the extent that the question seeks information relating to APS' economic evaluation of alternative generation supply options. Any such information is confidential, trade secret, and competitively sensitive, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1-4~~(h)~~f APS objects because the question seeks confidential, trade secret, and competitively-sensitive cost forecasts of APS, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1-5(a) Object to the extent that the Western Electricity Coordinating Council ("WECC") owns the relevant transmission system base case, and a confidentiality agreement would be required to access such materials (although APS does not believe that the base case in PTI format). If PGR is a member of the WECC, it could simply obtain the base case directly from the WECC.[2]

1-5(g) Object to the extent that the request is overly broad and unduly burdensome. Subject to such objection, APS will provide a response.

1-6(a) (vi) and (ix). APS objects because the question seeks confidential, trade secret, and competitively-sensitive information from APS, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1.6(b) APS objects to providing any confidential pricing information relating to the hedge contracts with non-affiliates that were identified in the Company's response to Question MR 1.4 of Staff's First Data Request. Subject to such objection, APS will provide a response.

1-7 (b)-(f) APS objects because the question seeks confidential, trade secret, and competitively-sensitive information from APS, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1-8(a) Object to the extent that the request for "any and all" documents is overly broad and unduly burdensome. Subject to such objection, APS will provide information for load forecasts in workpapers on November 4, 2002.

1-13(d) APS objects because the question seeks confidential, trade secret, and competitively-sensitive information from APS, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1-14(d) APS objects because the question seeks confidential, trade secret, and competitively-sensitive information, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1-15 Object to the extent that the request for "all" transmission studies is overly broad and unduly burdensome, particularly given that many of the studies were performed by and are in the possession of Salt River Project. Subject to such objection, APS will provide a response.

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[2] Becoming a member of the WECC's predecessor organization, the WSCC, was a requirement in PGR's Certificate of Environmental Compatibility.

1-18 APS objects because the question seeks confidential, trade secret, and competitively-sensitive information from APS, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1-21(c) APS objects because the question seeks confidential, trade secret, and competitively-sensitive information from APS, and PGR's acquisition of such information would adversely impact the competitive bidding process.

1-26 to 1-34 APS objects to these questions as they do not seek information relevant to Track B nor are they reasonably calculated to lead to the discovery of admissible evidence. FERC-jurisdictional gas supply contracts between El Paso Natural Gas Company and APS and its affiliates are not relevant to competitive procurement in Track B. Such matters are appropriately addressed at FERC, where Panda is already litigating over these contracts. APS further objects to the extent that the questions call for the production of confidential, trade secret, and competitively-sensitive information.

Please call me if you have any questions or would like to further discuss any of these objections.

Very truly yours,

SNELL & WILMER

Jeffrey B. Guldner

Attorneys for Arizona Public Service Company

JBG/lmk
1261962.1

EXHIBITS

C

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 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	DOCKET NO. E-00000A-01-0630
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 **PROTECTIVE ORDER**

On November 1, 2002, Arizona Public Service Company ("APS") filed a Motion for a Protective Order in the above-captioned "Track B" dockets. The Motion requested that the disclosure of confidential, competitively-sensitive information in these Track B dockets be limited to Staff and the Residential Utility Consumers Office ("RUCO"), who are not competitors of APS.

APS' request is consistent with the approach for handling such information in Staff's proposal for the competitive solicitation in Track B. Further, the disclosure of

competitively-sensitive information from utility buyers to merchant generator sellers could adversely impact competitive solicitations by such utilities and should be avoided.

IT IS ORDERED granting APS' Motion. Staff and RUCO may request and, if so, shall be provided with confidential competitively-sensitive information in Track B, but other intervenors shall not be entitled to receive such information.

DATED this ___ day of November, 2002.

TEENA I. WOLFE
ADMINISTATIVE LAW JUDGE

The original and 10 copies of the foregoing were filed this 1st day of November, 2002 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007.

Copies of the foregoing mailed, faxed or transmitted electronically this 1st day of November, 2002 to:

All parties of record.

1262813.2

EXHIBITS

D

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 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR	DOCKET NO. E-00000A-01-0630
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 **AFFIDAVIT OF THOMAS J. CARLSON**

STATE OF ARIZONA)
) ss.
County of Maricopa)

Thomas J. Carlson, being first duly sworn, upon oath, deposes and says:

1. I am the Head of Trading for Arizona Public Service Company ("APS" or "Company").

2. In that role, I am responsible for procuring purchase power and natural gas for APS, and also the marketing of surplus APS generation and natural gas. I have

over 10 years experience in commodity trading for APS, and am knowledgeable about wholesale power trading and general standards of confidentiality in the energy trading business.

3. I have reviewed Panda's First Set of Data Requests in the Track B Proceeding.

4. Question Nos. 1.2; 1.4(f); 1.6(a)(ix) to the extent not reported in FERC Form 1; 1.6(b) to the extent a response includes confidential pricing information; 1.7(b) through (f); 1-13(d); 1-14(d); 1-18; and 1-21(c) all request the disclosure of competitively-sensitive information that I believe would adversely affect APS' ability to buy and sell power in the market, including procurements in the Track B competitive solicitation.

5. The competitively-sensitive information identified in Paragraph 4 is maintained in strictest confidence in the ordinary course of business.

6. Among other things, the request for wholesale market forecasts in Questions 1.4(f) and 1.18 would provide competitors with confidential information on APS' price forecasts that would likely skew upward any offers to sell to APS towards those forecasts.

7. The dispatch information for APS units requested in Questions 1.2 and 1.21(c) would provide sellers of economy energy to APS with information on the costs which APS is attempting to beat with a market purchase, which would cause prices to move higher and towards such costs rather than towards the price a seller would offer without knowing APS' dispatch costs and model.

8. The cost and performance information sought by Questions 1.6(a)(ix), 1.6(b), 1.7(b)-(f), 1.13(d), and 1.14(d) would also give sellers competitive insight into APS costs, which would likely cause bids to sell to APS to be higher than if those costs were not known to the seller.

9. The information described in paragraphs 4-8 would also allow competitors of APS for sales into the competitive wholesale market to undercut APS and reduce both the volume and margin of such sales, both of which would adversely affect APS customers.

10. The release of this information in discovery would be damaging to APS and would, I believe, cause APS to pay more for wholesale power than if such information was kept confidential.

11. None of the information requested by Panda is typically disclosed to competitors in the energy trading business.

SUBSCRIBED AND SWORN to before me this 31 day of October, 2002.

Notary Public

My Commission Expires:

2/12/2006

1263501.1

OFFICIAL SEAL
NORANN ASCIUTTO
Notary Public - State of Arizona
MARICOPA COUNTY
My comm. expires Feb. 12, 2006