



0000093502

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

BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE PETITION OF)
THE ARIZONA BOARD OF REGENTS ON)
BEHALF OF THE UNIVERSITY OF)
ARIZONA FOR DECLARATORY ORDER)
CONFIRMING THE UNIVERSITY'S)
AUTHORITY TO SELECT AMONG)
ELIGIBLE ELECTRIC SERVICE)
PROVIDERS.)

DOCKET NO.
E-01461A-08-0300

PROCEDURAL
CONFERENCE

At: Tucson, Arizona
Date: January 22, 2009
Filed: **FEB 02 2009**

RECEIVED
2009 FEB -2 P 1:47
AZ CORP COMMISSION
DOCKET CONTROL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Arizona Corporation Commission
DOCKETED

FEB -2 2009

DOCKETED BY *nr*

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite 502
2200 North Central Avenue
Phoenix, Arizona 85004-1481

By: MICHELE E. BALMER
Certified Reporter
Certificate No. 50489

Prepared for:

ACC

ORIGINAL

**FOR
INTERNAL
&
INTERAGENCY
USE
ONLY**

Pursuant to the contract with Arizona Reporting Service all transcripts are available electronically for internal agency use only.

Do not copy, forward or transmit outside the Arizona Corporation Commission.



1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, 400 West Congress Street,
4 Tucson, Arizona, commencing 10:05 a.m. on the 22nd day of
5 January, 2009.

6

7 BEFORE: JANE L. RODDA, Administrative Law Judge

8

9 APPEARANCES:

10 For the Arizona Corporation Commission Staff:

11 Ms. Amanda Ho
12 Staff Attorney, Legal Division
13 1200 West Washington Street
14 Phoenix, Arizona 85007
15 (Appeared telephonically)

16

17 For the University of Arizona:

18

19 OSBORN MALEDON, P.A.
20 By: Ms. Joan S. Burke
21 2929 North Central Avenue, Suite 2100
22 Phoenix, Arizona 85012
23 (Appeared telephonically)

24

25 For Trico Electric Cooperative:

DWIGHT M. WHITLEY, PLLC
By: Mr. Dwight M. Whitley
2329 North Tucson Boulevard
Tucson, Arizona 85716
(Appeared telephonically)

26

27

28

1 APPEARANCES: (Cont'd)

2 For Arizona Public Service Company:

3 PINNACLE WEST CAPITAL CORPORATION LAW DEPARTMENT
4 By: Mr. Joe D'Aguanno
400 North 5th Street
Phoenix, Arizona 85004
5 (Appeared telephonically)

6

7

8

MICHELE E. BALMER
Certified Reporter
Certificate No. 50489
(Appeared telephonically)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 ALJ RODDA: On the record. This is the time set
2 for the procedural conference in Docket No. E-01461A-
3 08-0300, which is the petition of the Arizona Board of
4 Regents on behalf of the University of Arizona for
5 declaratory order confirming the University's authority to
6 select among eligible service providers, at least that's
7 how it's captioned.

8 Good morning, and welcome to the Arizona
9 Corporation Commission. My name is Jane Rodda, and I'm
10 the Administrative Law Judge assigned to this matter.

11 The first thing I'm going to do is to take
12 appearances of the parties. So we'll start with the
13 petitioner, the University of Arizona.

14 MS. BURKE: Good morning, Judge Rodda. This is
15 Joan Burke with the firm Osborn Maledon on behalf of the
16 University of Arizona. And also on the call is Steve
17 Adamczyk, in-house counsel for the University of Arizona.

18 ALJ RODDA: Great. Thank you.

19 And on behalf of Trico?

20 MR. WHITLEY: This is Dwight Whitley.

21 ALJ RODDA: And APS?

22 MR. D'AGUANNO: Joseph D'Aguanno.

23 ALJ RODDA: And Commission Staff?

24 MS. HO: Good morning. Amanda Ho on behalf of
25 the Utilities Division Staff.

1 ALJ RODDA: Well, I appreciate Staff's
2 participation in this, and I particularly appreciate the
3 filing that you all made the other day. So I take it that
4 the parties have reached a settlement. Who wants to talk
5 to that? Is it you, Ms. Burke, or --

6 MS. BURKE: Certainly, Your Honor. This is Joan
7 Burke on behalf of the University, the petitioner, and you
8 are correct.

9 And I guess just to start off, the University
10 would express its thanks for the cooperation of both APS
11 and Trico working very diligently towards reaching a
12 settlement and, you know, meeting for a full day to reach
13 that settlement, and then working hard on crafting an
14 agreement that represented what the agreement was.

15 I think all parties are still on board with
16 respect to that settlement. I think it's been executed by
17 all of the parties, but we can confirm that on the call
18 today, and I think our next step is dismissing the
19 petition. And we appreciate Staff's assistance in
20 reviewing the settlement agreement.

21 It was the parties' position that it was not an
22 agreement that required Commission approval. It continues
23 to be the parties' -- the University's position that it
24 doesn't, and we can withdraw our petition and kind of
25 continue to implement the settlement agreement.

1 ALJ RODDA: Okay. Ms. Burke, is the agreement
2 with APS set, or is there any reason why -- is it
3 confidential, I guess. Is it confidential at all?

4 MS. BURKE: It is. There's a paragraph in the
5 agreement that makes it confidential.

6 ALJ RODDA: Okay. Can you tell me on the record
7 if -- does the agreement with APS require Commission
8 approval as a special contract, or is it tariff rates, or
9 can you tell me that much?

10 MS. BURKE: I may need to defer to Mr. D'Aguanno,
11 but I think, no, it doesn't require approval. It's a
12 standard service arrangement whereby we accept power under
13 standard rates within the APS service territory.

14 And, in fact, just so the record is clear, at
15 this time it's a small use. It's two irrigation wells,
16 essentially, and some additional use. And the goal, just
17 to put this in the record -- and I think that I don't want
18 to lose sight of it -- the University is intending to
19 create a solar energy facility at this location, and
20 eventually, if those plans progress as intended, will not
21 need power from either Trico or APS. But there's no
22 Commission approval associated with the University's
23 purchase of power from APS.

24 ALJ RODDA: All right. So let me ask
25 Mr. Whitley. Do you agree that this agreement does not

1 require Commission approval?

2 MR. WHITLEY: I do.

3 ALJ RODDA: And Mr. D'Aguanno?

4 MR. D'AGUANNO: I do agree that it does not
5 require Commission approval.

6 ALJ RODDA: And Ms. Ho, I think from Staff's
7 comment, I take it Staff concurs with that conclusion.

8 MS. HO: Well, Judge Rodda, I think on the record
9 we just would like to make sure that there are arguments
10 for either side. I think it's just we looked at this
11 settlement agreement in the light of promoting settlement,
12 and we're not urging at this time that this agreement
13 needs Commission approval.

14 ALJ RODDA: Okay. And I noted that you found
15 some -- arguably some ratemaking treatment that, I take it
16 from your comments, doesn't go into effect now but might
17 in the future. Does that make sense, my question?

18 MS. HO: That is our understanding, but if you
19 would like to ask the parties for additional
20 clarification.

21 ALJ RODDA: I'll just ask Ms. Burke. Did you get
22 a chance to read Staff's comments that they filed the
23 other day?

24 MS. BURKE: Yes, I did.

25 ALJ RODDA: And did you have any thoughts on that?

1 MS. BURKE: I think that the Staff's comments
2 regarding the ratemaking treatment, you're absolutely
3 correct that those will only become a concern if certain
4 things happen, which -- and I think, just so you know,
5 Your Honor, the confidentiality paragraph in the agreement
6 makes provision for some disclosure by agreement of the
7 parties in the context of regulatory review. The
8 paragraph contains that. And Ms. Ho consulted with all of
9 the parties before making her filing and got permission to
10 make the disclosure she made.

11 And I don't think I'm going beyond the parties'
12 permission by saying the use -- the level of use of energy
13 at the property, the Red Rock Agricultural Center, is the
14 hinge point for -- is the trigger for those ratemaking
15 concerns. And, you know, it's the University's
16 expectation that that will not ever come to pass. And if
17 they do, consistent with Staff's understanding, then
18 whatever happens at that point, you know, we'll have to
19 come back to the Commission, or Trico will have to come
20 back to the Commission, and get waivers of tariffs or get
21 approval for ratemaking treatment. But that scenario
22 depends on the power usage at Red Rock, and at this stage
23 we don't anticipate getting there.

24 ALJ RODDA: Okay. Mr. Whitley or Mr. D'Aguanno,
25 do you have anything to add to that?

1 MR. D'AGUANNO: This is Mr. D'Aguanno. I have
2 nothing further to add.

3 ALJ RODDA: Mr. Whitley, did you have anything?

4 MR. WHITLEY: This is Skip Whitley. No. I don't
5 disagree with that.

6 ALJ RODDA: So then, Ms. Burke, I guess since
7 it's the University's -- do you plan on like -- are you
8 making a request today to dismiss it, or do you want to
9 file something once you confirm that it's been executed?

10 MS. BURKE: Yes. The settlement agreement
11 provides that the University will file a request to
12 withdraw the petition.

13 ALJ RODDA: All right. So then, I guess, I'll
14 just await that filing and, if no one objects, do what I
15 need to do to dismiss the complaint or whatever it is, the
16 request for declaratory order, and close the docket.

17 MR. WHITLEY: Super. This is Skip Whitley. I
18 would just like to echo Joan's compliments to everybody as
19 stated for this process. It was handled in a very
20 professional way.

21 ALJ RODDA: Good. Well, I appreciate all of your
22 work, too. You seem to have worked it out, so good job.

23 All right. Then unless there's anything further,
24 I'll just await that future filing. Thank you all.

25 (The Procedural Conference concluded at 10:15 a.m.)

