

ORIGINAL



0000096943

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

2009 MAY 13 P 3:41

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

MAY 13 2009

DOCKETED BY	<i>MC</i>
-------------	-----------

IN THE MATTER OF THE APPLICATION OF
THE SOLAR ALLIANCE FOR A DECLARATORY
ORDER THAT PROVIDERS OF CERTAIN
SOLAR SERVICE AGREEMENTS WOULD NOT
BE PUBLIC SERVICE CORPORATIONS.

DOCKET NO. E-20633A-08-0513

PROCEDURAL ORDER

BY THE COMMISSION:

On October 3, 2008, The Solar Alliance ("Solar Alliance") filed with the Arizona Corporation Commission ("Commission") an application for a declaratory order that providers of certain solar service agreements ("SSAs") would not be public service corporations pursuant to Article 15, Section 2 of the Arizona Constitution ("Application").

On November 24, 2008, at the request of the Commission's Utilities Division ("Staff"), a procedural conference was convened as scheduled by procedural order issued November 3, 2008. Solar Alliance, APS, and Staff appeared through counsel.

On January 12, 2009, a procedural order was issued ordering publication and mailing of notice of the Application, setting a deadline for intervention, and setting a deadline for the filing of a Staff Report on the Application, and for parties to file Responses thereto.

On January 30, 2009, and February 4, 2009, Solar Alliance filed Notices of Filing Affidavits of Publication and Public Notice.

Intervention in this matter has been granted to Arizona Public Service Company ("APS"), Western Resource Advocates ("WRA"), Salt River Project Agricultural Improvement and Power District ("SRP"), Trico Electric Cooperative, Inc. ("Trico"), Tucson Electric Power Company ("TEP"), UNS Electric, Inc. ("UNS"), Freeport-McMoRan Copper & Gold, Inc. ("Freeport-McMoRan"), Arizonans for Electric Choice and Competition ("AECC"), Arizona Electric Power

1 Cooperative, Inc. ("AEPSCO"), the Residential Utility Consumer Office ("RUCO"), Mohave Electric
2 Cooperative, Inc. ("MEC"), Navopache Electric Cooperative, Inc. ("Navopache"), Sulphur Springs
3 Valley Electric Cooperative, Inc. ("SSVEC"), Sempra Energy Solutions, LLC ("SES"), and the
4 Interstate Renewable Energy Council ("IREC").

5 Letters in support of the Application have been filed by the Tucson-Pima County
6 Metropolitan Energy Commission, Embry-Riddle Aeronautical University, the Prescott Chamber of
7 Commerce, Scottsdale Unified School District, Laveen Elementary School District No. 59, Tolleson
8 Union High School District, Madison Elementary School District 38, Mesa Public Schools,
9 Honeywell, CarbonFree Technology Corp., and Ironco Enterprises, LLC.

10 On March 11, 2009, Staff filed its Staff Report on the Application. Staff recommended that a
11 hearing be held in this matter.

12 Responses to the Staff Report were filed by RUCO, APS, IREC, AEPSCO, SRP, Freeport-
13 McMoRan and AECC (jointly), TEP and UNS (jointly), SSVEC, and SES.

14 On April 24, 2009, Solar Alliance filed a Motion for Procedural Conference ("Motion"). As
15 Solar Alliance points out in the Motion, the parties take a variety of differing positions on procedural
16 matters related to processing the Application, and identify a variety of substantive issues.

17 RUCO and AEPSCO raise the issue of whether Solar Alliance has standing to bring the
18 Application.

19 Staff, RUCO, TEP and UNS, SRP, Freeport-McMoRan and AECC, and SES state that it is
20 either necessary or would be helpful to have a hearing on the Application.

21 TEP and UNS, AEPSCO, SRP and IREC take positions on the question of whether providers
22 of SSAs are public service corporations under Arizona law. AEPSCO, TEP and UNS, and SRP assert
23 that under the facts stated in the Application, SSA providers would be public service corporations,
24 while IREC asserts that they would not be public service corporations.

25 Several parties identify substantive issues they believe are related to the Application.

26 The Motion sets forth Solar Alliance's position on the procedural issues of standing, the scope
27 of the proceeding, and whether a hearing is necessary.

28 By its Motion, Solar Alliance requests that a procedural conference be scheduled for the

1 purpose of addressing the following three procedural issues:

- 2 1. Whether the Commission believes the Alliance has standing to bring the Application;
- 3 2. What issues the Commission desires be addressed in this proceeding; and
- 4 3. Whether the Commission desires a hearing on the issues that it determines are within
- 5 the scope of this proceeding.

6 No responses to the Motion have been filed.

7 A procedural conference should be held to allow the parties to discuss an appropriate
8 procedure for processing the Application.

9 IT IS THEREFORE ORDERED that a **procedural conference** shall be held on **June 22,**
10 **2009, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, Hearing Room 1,
11 Phoenix, Arizona, for the purpose of addressing the following three procedural issues:

- 12 1. Whether the Alliance has standing to bring the Application;
- 13 2. What issues should be addressed in this proceeding; and
- 14 3. Whether a hearing should be held, and if so, the issues that should be considered
- 15 during the hearing.

16 IT IS FURTHER ORDERED that those parties who believe that a hearing should be held in
17 this proceeding shall file, by **June 15, 2009,** a list including all the issues the party believes should be
18 considered at the hearing.

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
20 Communications) continues to apply to this proceeding.

21 IT IS FURTHER ORDERED that all parties must comply with Rule 38(a) of the Rules of the
22 Arizona Supreme Court with respect to practice of law and admission *pro hac vice*.

23 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
24 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
25 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
26 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
27 matter is scheduled for discussion, unless counsel has previously been granted permission to
28 withdraw by the Administrative Law Judge.

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 DATED this 13th day of May, 2009.

5
6
7 
8 TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 13th day of May, 2009 to:

11 Scott S. Wakefield
12 RIDENHOUR, HEINTON, KELHOFFER
& LEWIS, P.L.L.C.
201 North Central Avenue, Suite 3300
Phoenix, Arizona 85004-1052

C. Webb Crockett
Patrick J. Black
FENNEMORE CRAIG, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for Freeport-McMoRan and AECC

13 Lawrence V. Robertson, Jr.
14 P.O. Box 1448
2247 East Frontage Road
15 Tubac, Arizona 85646-1448
Attorneys for SES

Jana Brandt
Kelly Barr
Regulatory Affairs and Contracts
SALT RIVER PROJECT
Mail Station PAB221
P.O. Box 52025
Phoenix, Arizona 85072-2025

16 David Berry
17 WESTERN RESOURCE ADVOCATES
P.O. Box 1064
18 Scottsdale, Arizona 85252-1064

Philip J. Dion
Michelle Livengood
Dave Couture
UNISOURCE ENERGY COMPANY
One South Church Avenue, Suite 200
Tucson, Arizona 85701-1623
Attorneys for TEP and UNS Electric

19 Daniel W. Pozefsky, Chief Counsel
RESIDENTIAL UTILITY CONSUMER OFFICE
1110 West Washington Street, Suite 220
20 Phoenix, Arizona 85007-2958

21 Russell E. Jones
WATERFALL ECONOMIDIS CALDWELL
22 HANSHAW & VILLAMANA, P.C.
5210 East Williams Circle, Suite 800
23 Tucson, Arizona 85711-4482
Attorneys for TRICO

Michael M. Grant
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Pheonix, Arizona 85016-9225
Attorneys for AEPSCO

24 Michael A. Curtis
William P. Sullivan
25 Ian D. Quinn
CURTIS, GOODWIN, SULLIVAN,
26 UDALL & SCHWAB, PLC
501 East Thomas Road
27 Phoenix, Arizona 85012-3205
Attorneys for Mohave and Navopache

Deborah R. Scott
Linda J. Benally
PINNACLE WEST CAPITAL CORPORATION
400 N. 5th Street, M/S 8695
Phoenix, Arizona 85004

1 Kenneth C. Sundlof, Jr.
2 JENNINGS, STROUSS & SALMON, P.L.C.
3 201 E. Washington St., 11th Floor
4 Phoenix, AZ 85004-2385
5 Attorneys for SRP

6 Kevin T. Fox
7 KEYES & FOX LLP
8 5727 Keith Avenue
9 Oakland, CA 94618

10 Michael W. Patten
11 J. Mathew Derstin
12 ROSHKA, DEWULF & PATTEN, PLC
13 400 E. Van Buren, Suite 800
14 Phoenix, AZ 85004
15 Attorneys for TEP and UNS Electric

16 Bradley S. Carroll
17 SNELL & WILMER, LLP
18 One Arizona Center
19 400 E. Van Buren
20 Phoenix, AZ 85004-2202
21 Attorneys for SSVEC

22 Timothy Hogan
23 ARIZONA CENTER FOR LAW IN THE
24 PUBLIC INTEREST
25 202 E. McDowell, Suite 153
26 Phoenix, AZ 85004
27 Attorneys for Western Resources

28 Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007-2927

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007-2927

22
23 By: 
24 Debra Broyles
25 Secretary to Teena Wolfe
26
27
28