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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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Chairman

AZ CORP COMMISSION  
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JIM IRVIN

MAR 15 2002

Commissioner

MARC SPITZER

Commissioner

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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

IN THE MATTER OF TUCSON ELECTRIC  
POWER 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 ARIZONA PUBLIC SERVICE COMPANY  
TO REQUEST FOR EXTENSION OF TIME TO FILE TESTIMONY

(Oral Argument Requested)

Snell & Wilmer

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

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1 Arizona Public Service Company ("APS" or "Company") hereby responds to the  
2 Arizona Competitive Power Alliance's ("Alliance") March 13, 2002 Request for  
3 Extension of Time to File Testimony. APS respectfully requests that the Chief  
4 Administrative Law Judge ("ALJ") of the Arizona Corporation Commission  
5 ("Commission") deny the motion in its entirety, as it fails to offer any reasonable  
6 justification or supporting circumstances to warrant granting such an extension, and  
7 granting such an extension would clearly and materially prejudice APS.

8  
9 **1. The Alliance Fails to Provide Any Reasonable Justification for the Requested Extension.**

10 Over one month after the ALJ issued her procedural order establishing a schedule  
11 for testimony and a hearing for Docket No. E-01345A-01-0822 (Partial Variance  
12 Request), the Alliance now states that its unnamed expert witnesses are too busy working  
13 in other states. (Motion at p.1, lines 14-22.) The Alliance further contends that there are a  
14 limited number of expert witnesses in this area. Neither allegation was supported with  
15 any specificity. Of course there is a finite number of potential witnesses on any subject,  
16 but given the fact that the Alliance's members constitute most of the IPP community and  
17 generally consist of companies much larger than APS, it is more than doubtful that the  
18 Alliance has been left wholly bereft of expert assistance. Similarly, all of us have things  
19 to do other than this proceeding. If the Commission is to grant extensions simply because  
20 this or that party or its witnesses are busy, this hearing will never take place.

21 Interestingly, the Motion does not allege that the Alliance has had insufficient time  
22 since the filing of the Application to prepare its case or that APS has been untimely or not  
23 forthcoming in its responses to the Alliance's written discovery. Moreover the Motion  
24 seemingly ignores that APS has had the Application on file since October 18, 2001, and  
25 its testimony on file with the Commission since December 12, 2001. APS prepared and  
26 timely filed its Direct Testimony, including the testimony of two expert witnesses, after

1 being directed to do so in a Procedural Order dated November 20, 2001, in 12 days. Such  
2 testimony did not address a single issue not already raised in the Application itself or  
3 raised by the Alliance in the Alliance's own intervention request. Thus, the Alliance has  
4 had since October 18, 2001 or at the latest, December 12, 2001—long before the February  
5 8, 2002 date referenced in its Motion—to obtain expert witnesses and to prepare its  
6 testimony. Accordingly, any protestation by the Alliance that it has lacked sufficient time  
7 to develop its direct case is wholly without merit, and is little more than a continuation of  
8 the merchant generators' persistent efforts to postpone the Commission's consideration of  
9 the Application.

10  
11 **2. The Alliance Cannot Claim That It Lacked Adequate Time  
to Conduct Discovery.**

12 The Alliance's assertions that its "discovery is ongoing" and that more information  
13 and data obtained from discovery may change the "scope and nature" of the Alliance's  
14 testimony also provides no basis for granting the Alliance's requested delay. Since there  
15 is no cut-off date for written discovery under the ALJ's December 5, 2001 Procedural  
16 Order, every party to this proceeding could make the above claim right up until the day of  
17 the hearing itself. In fact, the Alliance's first (and to date only) set of data requests to  
18 APS were served on January 3, 2002—again before the February 8, 2002 procedural order  
19 referenced in the Motion. That first set of discovery from the Alliance consisted of 94  
20 individual data requests, not including subparts. APS responded within 10 days as  
21 directed by the ALJ's Procedural Order, and has received no additional data requests from  
22 the Alliance to date. In contrast, the Alliance has failed to either object or respond to any  
23 of APS' data requests (or to even request an extension of time).<sup>1</sup> Accordingly, there is

24 <sup>1</sup> Most of the individual merchant generator intervenors the Alliance claims as members requested  
25 (and received) extensions of time from APS to respond to data requests. To date, all but two merchant  
26 generator intervenors (Sempra and Southwestern) have thereafter interposed objections to virtually every  
question posed by APS.

1 simply no justifiable basis for the Alliance to contend that it has not had enough time to  
2 conduct needed discovery.

3  
4 **3. The Alliance's Request Will Unquestionably Prejudice APS and Likely  
Lead to a Delay in the Scheduled Hearing.**

5 Finally, the Alliance makes the wholly unsupported statement that this "10-day  
6 extension of time will not prejudice the interests of any other parties." (Motion at p.2,  
7 lines 6-7.) This statement is obviously inaccurate. The procedural schedule established in  
8 the ALJ's February 8, 2002 Procedural Order provides 23 days for APS to first read the  
9 testimony of an unknown (but likely to be large) number of witnesses,<sup>2</sup> then conduct  
10 discovery concerning that testimony and address the apparently-likely discovery disputes  
11 that will result, and then prepare its rebuttal testimony.<sup>3</sup> The Alliance's requested  
12 extension would shorten by ten days or 44% that already limited time—unquestionably  
13 prejudicing APS and, for that matter, any other party whose interests may be contrary to  
14 those of the Alliance. The Alliance is no doubt aware that APS would likely have to  
15 consider requesting a delay in the hearing to allow it adequate time for discovery and  
16 rebuttal, and it is precisely that—delay—which the Alliance and the merchant generators  
17 have sought since the beginning of this proceeding.

18  
19 **4. Conclusion**

20 There is no justification for the Alliance's request to extend the three and a half  
21 months—really closer to five and a half months—that it already has to prepare testimony  
22

23 <sup>2</sup> Since the Alliance has refused to even identify its witnesses in response to the Company's data  
24 request, APS has no idea how many witnesses will take advantage of the requested extension to file their  
25 testimony. For all APS knows, all the individual merchant plant intervenors' witnesses may now be  
26 presented as Alliance witnesses, thus effectively extending the filing date for all.

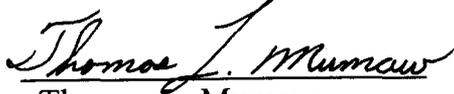
<sup>3</sup> This 23-day period is in contrast to the 107 days already given the Alliance to respond to just three  
Company witnesses.

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by another 10 days and with significant prejudice to APS. Accordingly, APS respectfully requests that the ALJ deny the Alliance's Motion in its entirety.

RESPECTFULLY SUBMITTED this 15th day of March 2002.

SNELL & WILMER L.L.P.



Thomas L. Mumaw  
Jeffrey B. Guldner  
Faraz Sanei

Attorneys for Arizona Public Service Company

Original and 18 copies of the foregoing filed this 15th day of March, 2002, with:

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

Copies of the foregoing mailed, faxed or transmitted electronically this 15th day of March, 2002, to:

All parties of record



Judith Borrego

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