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Arizona Corporation Commission

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APR 05 2002

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BEFORE THE ARIZONA CORPORATION COMMISSION

E-00000A-02-0051
E-01345A-01-0822
E-00000A-01-0630
E-01933A-02-0069
E-01933A-98-0471

IN THE MATTER OF THE ARIZONA)
PUBLIC SERVICE COMPANY'S)
REQUEST FOR A VARIANCE OF)
CERTAIN REQUIREMENTS OF A.C.C.)
R14-2-1606)

Docket No

**REPLY OF SOUTHWESTERN POWER
GROUP II, LLC TO ARIZONA PUBLIC
SERVICE COMPANY'S RESPONSE TO
PANDA GILA RIVER'S REQUEST FOR
ORDER TO SHOW CAUSE**

Southwestern Power Group II, LLC ("SWP") hereby submits its reply to the Response to Request for Order to Show Cause ("Response") filed by Arizona Public Service Company ("APS") on March 29, 2002 in the above-captioned proceeding. In that regard, SWP incorporates herein as a part of its reply the discussion and legal arguments set forth in Panda Gila River L.P.'s ("Panda") April 5, 2002 Reply to APS's Response. In the interest of brevity, SWP will not restate such discussion and arguments at this time.

However, as noted by Commissioner Spitzer in his March 26, 2002 letter to Commissioners Mundell and Irvin, "the issues raised [by Panda's Request] go to the heart of the [APS] Request for Variance that initiated this docket." The question then is whether the procedural manner of resolution suggested by Panda is timely, efficient and fair to all concerned. The answer is a resounding "yes," notwithstanding APS's strawman and red herring arguments to the contrary.

For, as Panda notes in its Response, conduct of the requested RFP procedure need not delay a final Commission decision on APS's Request for Variance. To the contrary, it can be conducted within the general time frame needed for Commission consideration of and ruling upon the variance

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1 request; and the Commission's ultimate decision upon the Request for Variance would be made on
2 a more informed basis. The most persuasive testimony by contending experts cannot credibly offset
3 or override the actual results of a properly conceived and conducted RFP.
4

5 Moreover, APS is not "entitled" to have its Request for Variance processed in the manner it
6 has proposed. The Commission has the discretion to determine the procedural manner through
7 which APS's request will be considered; and, the Commission may change its thinking in that regard
8 at any time, as long as the participating parties' due process rights are recognized and provided for.
9 In this instance, such change in thinking can, and should, include use of the RFP procedure requested
10 by Panda.
11

12 WHEREFORE, Southwestern Power Group II, LLC hereby requests that the Commission
13 issue an order (i) staying the procedural schedule currently in effect in the above-captioned
14 proceeding, (ii) directing APS to implement the type of RFP procedure proposed in Panda's March
15 19, 2002 Request for Order to Show Cause, and (iii) reserving to itself the discretion to determine
16 when and how to resolve APS's Request for Variance once the results of the RFP have been received
17 and evaluated.
18

19 DATED: April 5, 2002

20 Respectfully submitted,

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22
23 By: Lawrence V. Robertson, Jr. / J.V.R.
24 Lawrence V. Robertson, Jr.
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Original and 15 copies filed
with Docket Control this
5th day of April, 2002

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