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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2002 APR 24 P 3:08

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CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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AZ CORP COMMISSION
DOCUMENT CONTROL

APR 24 2002

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IN THE MATTER OF THE GENERIC) DOCKET NO. E-00000A-02-0051
PROCEEDING CONCERNING ELECTRIC)
RESTRUCTURING ISSUES)

IN THE MATTER OF ARIZONA PUBLIC) DOCKET NO. E-01345A-01-0822
SERVICE COMPANY'S REQUEST FOR)
VARIANCE OF CERTAIN REQUIREMENTS)
OF A.A.C. R14-2-1606)

IN THE MATTER OF THE GENERIC) DOCKET NO. E-00000A-01-0630
PROCEEDING CONCERNING THE ARI-)
ZONA INDEPENDENT SCHEDULING)
ADMINISTRATOR)

IN THE MATTER OF TUCSON ELECTRIC) DOCKET NO. E-01933A-02-0069
POWER COMPANY'S APPLICATION FOR)
A VARIANCE OF CERTAIN ELECTRIC)
COMPETITION RULES COMPLIANCE)
DATES)

IN THE MATTER OF THE APPLICATION) DOCKET NO. E-01933A-98-0471
OF TUCSON ELECTRIC POWER)
COMPANY FOR APPROVAL OF ITS)
STRANDED COST RECOVERY)

**RESPONSE OF THE ARIZONA COMPETITIVE POWER ALLIANCE IN SUPPORT
OF
STAFF'S AND PANDA GILA RIVER, L.P.'S SEPARATE REQUESTS FOR
STAY OF THE APS VARIANCE REQUEST PROCEEDINGS AND IMMEDIATE
COMMENCEMENT OF REVIEW OF CERTAIN THRESHOLD ISSUES**

1 The Arizona Competitive Power Alliance (hereinafter referred to as the
2 “Alliance”) have reviewed the Motion for Determination of Threshold Issue (“APS
3 Motion”) submitted April 19, 2002 by Arizona Public Service Company (“APS”), the
4 separate Responses thereto filed by Panda Gila River, L.P. (“Panda”) and Staff of the
5 Arizona Corporation Commission (“Staff”) on April 23, 2002, the Staff Report In the
6 Generic Electric Restructuring Docket filed March 22, 2002, as well as Panda’s
7 Request for an Order to Show Cause (the “OSC”) filed March 19, 2002 and the
8 response of APS and replies filed in relation thereto. Through these pleadings, APS,
9 Panda and Staff all request the Commission immediately commence proceedings to
10 consider certain threshold issues. Panda and Staff further request the Commission stay
11 the APS Variance Request proceedings in which hearings are scheduled to commence
12 Monday, April 29, 2002. By its OSC, Panda also requests the Commission to order
13 APS to conduct a Request For Proposal (“RFP”).
14

15 The Alliance supports a stay of the APS Variance Request proceedings
16 and the immediate initiation of generic proceedings to determine the issues identified
17 by Staff (transfer of assets and market power considerations).¹ However, the Alliance
18 strongly agrees with Panda as well that the proceedings should also develop the guiding
19 principles for the competitive bidding and the bilateral contracting processes mandated
20 by A.A.C. R14-2-1606(B). Thus, the Alliance believes the Commission must also
21 develop the guiding principles for competitive bidding and bilateral contracting we
22 have proposed in order to maximize the likelihood that the competitive bidding and
23 bilateral processes are fully implemented (i.e., negotiations completed and contracts
24

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26 ¹ The views expressed herein represent the views of the Alliance but not necessarily the views of each of the individual members in all of the issues addressed.

1 executed) before January 1, 2003 for deliveries starting at such time and for such
2 periods as is determined in the generic proceeding, but in no event to begin later than
3 July 1, 2003 and that the RFP utilized by APS is transparent, fair and encourages
4 development of a competitive wholesale marketplace. To accomplish these objectives
5 the Alliance requests either Administrative Law Judge ("ALJ") Lyn Farmer (in the
6 APS Variance proceeding) or the Commission (at the Open Meeting on Panda's OSC)
7 enter a procedural order, or orders, implementing the following process²:
8

9 The APS Variance Request proceedings, including the hearing scheduled
10 to commence April 29, 2002 be stayed immediately.

11 Staff, APS and all other parties to this consolidated docket that so desire
12 be required to meet in workshops beginning as soon in May 2002 as possible. The
13 workshops shall be used to discuss and identify issues and recommendations regarding
14 transfer of assets, market power considerations and the guiding principles for the RFP
15 and the bilateral contracting processes. Staff, an ALJ or an Independent Evaluator
16 would Chair the workshop. The Chair would be responsible for keeping the workshop
17 focused and progressing in a timely fashion. If an Independent Evaluator is supported
18 by 60% of the participants who agree to share the cost thereof, an Independent
19 Evaluator shall be designated as the Chair. The Chair may direct that the three
20 threshold issues, or any sub-issues arising from the workshop, be dealt with in separate
21 workshops. Each separate workshop shall have its own Chair. The Chair(s) shall
22 attempt to secure agreement on as many issues and guiding principles as possible and
23 shall summarize, on the record, the issues and guiding principles agreed upon and the
24

25
26 ² All dates are suggestions. However, the Commission should ensure that it has a Final Report before it with sufficient time to act, if necessary, before September 1, 2002 (the date APS states it intends to transfer assets) and to ensure that Rule 1606(B) can be fully implemented (contracts executed) by January 1, 2003.

1 points and principles remaining unresolved at the close of each day of workshop. The
2 Chair(s) may direct any other portion of the discussions be recorded. The transcript of
3 any portion of the workshop placed on the record shall be part of the record in this
4 consolidated proceeding.

5 No later than June 24, 2002, the Chair shall develop and serve on all
6 parties in the consolidated docket a draft report setting forth, in writing: 1) the issues
7 identified, 2) any consensus reached, 3) a discussion of the pros and cons of the
8 alternative suggestions made by the parties, 4) recommendations on how the
9 Commission should proceed regarding the transfer of assets and market power and 5)
10 the guiding principles for the RFP and the bilateral contracting process. The parties
11 will be permitted to submit comments on the draft report through July 8, 2002. The
12 Chair will then review the comments, make any changes to the draft report and submit
13 a Final Report to the parties and the Commission by July 22, 2002. The Commission
14 should take whatever action it deems appropriate on the Report by August 14, 2002.

15 Unless otherwise ordered by the Commission, APS would prepare a draft
16 RFP consistent with the guidelines set forth in the Final Report filed with the
17 Commission and submit the RFP to the Chair and the parties by September 3, 2002.
18 The Chair would review the RFP for consistency with the guiding principles, taking
19 into account any comments on the RFP submitted by Staff and the Intervenors by
20 September 16, 2002. Not later than September 30, 2002, the Chair would find either
21 APS' RFP is consistent with the guiding principles or indicate how the RFP should be
22 modified to comply with the guiding principles. If necessary, APS would revise the
23 RFP and serve it on all parties. Unless the Commission orders otherwise, APS would
24 solicit bids pursuant to the RFP no later than September 30, 2002. Bids would be due
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1 by October 15, 2002. All responses to the RFP would be submitted to both APS and
2 the Chair. No later than November 11, 2002, APS will inform the Chair which bids it
3 intends to accept and the rationale supporting their selection. The Chair shall evaluate
4 the selected bids in accordance with the guidelines that have been established. The
5 Chair shall either certify the bid selection as consistent with the guidelines or file any
6 concerns regarding APS' bid selection with the Commission no later than November
7 13, 2002. All parties shall have the opportunity to comment on the Chair's certification
8 and the Commission shall resolve any remaining issues. APS shall not enter into any
9 binding contract until the Chair or the Commission certifies the bid selection. Unless
10 otherwise ordered by the Commission, APS shall enter into binding contracts consistent
11 with the guiding principles no later than December 20, 2002.

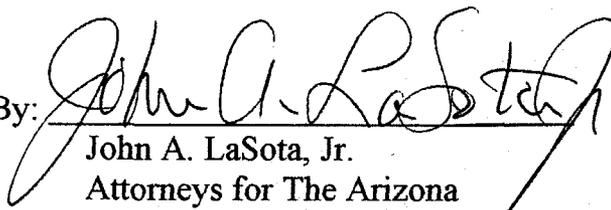
13 CONCLUSION

14 The Alliance supports the efforts of Staff, Panda and APS to
15 expeditiously address certain threshold issues to ensure a smooth transition to
16 competition, unimpeded by market power abuses during the transition. The Alliance
17 agrees with Panda and Staff that the proceedings on the APS Variance Request should
18 be stayed to permit the parties to immediately focus on the threshold issues. However,
19 the Alliance believes that it is necessary to consider the guidelines for competitive
20 bidding and bilateral contracts, as well as the transfer of assets and market power, as
21 part of the threshold issues to be addressed at this time. The Alliance respectfully
22 requests the ALJ or the Commission enter the appropriate Order or Orders To Stay
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1 proceedings on the APS Variance Request and to initiate the determination of these
2 three threshold issue consistent with the process outlined above.

3 RESPECTFULLY submitted this 24th day of April, 2002.

4
5 MILLER LaSOTA & PETERS, PLC

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1 Original and sixteen (16) copies of the foregoing
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1755-1 Pleadings Response Supporting Stay.0423.02