0000112856

INTERVENTION

Nov 30 4 13 PM '98

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF COMPETITION IN THE PROVISION OF ELECTRIC SERVICES THROUGHOUT THE STATE OF ARIZONA	Docket No. RE-00000C-94-165
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY	Docket No. E-01345A-98-0473 E-01345A-98-0471
IN THE MATTER OF THE FILING OF ARIZONA PUBLIC SERVICE COMPANY OF UNBUNDLED TARIFFS PURSUANT TO A.A.C. R14-2-1601 ET SEQ.	Docket No. E-01345A-97-0773

(i) APPLICATION FOR LEAVE TO INTERVENE IN DOCKET NOS. E-01345A-98-0473 AND E-01345A-97-0773

AND

(ii) COMMENTS/DISAGREEMENTS REGARDING PROPOSED AGREEMENT BETWEEN STAFF AND ARIZONA PUBLIC SERVICE COMPANY

OF

PSEG RESOURCES, INC.

RECEIVED

DEC 1 1998

LEGAL DIV
ARIZ. CORPORATION COMMISSION

Application For Leave To Intervene
In Docket Nos. E-01345A-98-0473
and E-01345A-97-0773

PSEG Resources, Inc. ("Resources") has been granted intervenor status in Docket No. RE-00000C-94-165 (the "1994 Proceeding") by order of the Commission. In light of the Settlement Agreement dated November 4, 1998 (the "Proposed Agreement") between Staff and Arizona Public Service Company ("APS") filed in the above-captioned dockets on November 5, 1998 (collectively, the "APS Dockets"), Resources respectfully makes application for leave to intervene and/or to intervene out-of-time in each of Docket Nos. E-01345A-98-0473 and E-01345A-97-0773. In support of such application, Resources incorporates herein, mutatis mutandis, the Application for Leave to Intervene it filed in the 1994 Proceeding. For your convenience, a copy of such Application for Leave to Intervene is attached hereto as Exhibit A.

Particularly in light of the Proposed Agreement, the APS Dockets are inexorably inter-linked and intertwined. Accordingly Resources requests intervention in all APS Dockets in order to protect adequately its interests.

Comments/Disagreements
Regarding Proposed Agreement

Pursuant to the Chief Hearing Officer's Procedural Order of November 13, 1998, Resources hereby submits its comments/disagreements regarding the Proposed Agreement:

1. Section VIII of the Proposed Agreement contemplates that APS "will transfer its generation and competition assets at book value into a separate corporate affiliate no later than December 31, 2002." One of APS's generation assets is the West Phoenix Combined Cycle Facility (the "West Phoenix Plant") leased from Resources. The initial term of the lease ends in 2001 subject to certain non-assignable fair market value renewal options and purchase options in favor of APS. If purchased by APS, the West Phoenix Plant could thereafter be transferred to the contemplated affiliate. If the lease is only renewed by APS, APS's leasehold interest is assignable by APS only to an entity "which shall have acquired all or substantially all of the property of [APS]". The contemplated affiliate would not meet the requirements of the lease documentation (because APS would be retaining a very substantial portion of its business and properties); the contemplated affiliate would not be a permitted assignee or sublessee of the West Phoenix Plant. If APS has neither purchased the West Phoenix Plant nor renewed its leasehold interest, APS no longer has any possessory or other rights to transfer to the contemplated affiliate.

2. Section V of the Proposed Agreement contemplates the transfer by APS of the bulk of its transmission facilities to Tucson Electric Power Company ("TEP"). APS owes certain contractual duties to Resources with respect to APS's transmission facilities in the event that APS fails to renew its leasehold interest in the West Phoenix Plant or to purchase the West Phoenix Plant. Any such transfer by APS should be expressly conditioned upon the assumption by TEP (or its affiliate) of the duties owed to Resources to the extent that the related facilities

may have been transferred to TEP (or its affiliate). Furthermore, the relative rights and obligations of APS and TEP going forward should give recognition to contractual duties to the owner of the West Phoenix Plant.

3 Section XIII of the Proposed Agreement makes reference to the sale of output from "must run generation units" but does not elaborate further as to which units are "must run", for which purposes and with what effect. The testimony of Jack E. Davis filed by APS on November 20, 1998 (page 13, lines 7 through 15) states that the West Phoenix Plant, in the view at least of Mr. Davis, would be a must-run unit. Mr. Davis also states that APS "agrees that must-run power must be cost-of-service regulated." Resources objects to any provision of the Proposed Agreement or to any later agreement that would bind the West Phoenix Plant to any particular characterization or outcome in the event that APS fails to purchase the unit or renew its leasehold of the unit. Imposition of "must run status" on the West Phoenix Plant without agreement by its owner would violate APS's agreement to keep the West Phoenix Plant unencumbered by "charges" and "rights of others". The owner of the West Phoenix Plant is a necessary party to any agreement concerning must-run status that purports to be effective in the event that APS has not purchased the West Phoenix Plant and has not renewed its leasehold interest.

RESPECTFULLY SUBMITTED

PSEG RESOURCES INC.

Timothy Michael Toy

Timothy Michael Toy

Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, New York 10004-1490
Phone (212) 858-1000
Fax: (212) 858-1500

Its Attorneys

November 30, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the above-captioned dockets.

Dated at New York City
this 30th day of November, 1998

Timothy Michael Toy

Timothy Michael Toy
Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, NY 10004-1490

Exhibit A

BEFORE THE ARIZONA CORPORATION COMMISSION

In the Matter of the Competition in the Provision of Electric Services Throughout the State of Arizona	))))	Docket No. RE – 00000C-94-0165

APPLICATION FOR LEAVE TO INTERVENE OF PSEG RESOURCES INC.

Pursuant to Rule 14-3-105 of the Rules of Practice and Procedure of the Arizona Corporation Commission, PSEG Resources, Inc. ("Resources"), through its attorneys, respectfully makes application for leave to intervene out-of-time in the above-captioned proceeding. In support thereof, Resources states as follows:

I.

All correspondence and communication in regard to this application to intervene (this "Application") should be addressed to the following:

John T. Travers and William H. Nau
272 Market Square, Suite 2724
Lake Forest, Illinois 60045
Phone: 847-482-1315
Facsimile: 847-482-1320

and to

Timothy Michael Toy, Esq.
Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, New York 10004-1490
Phone: 212-858-1344
Facsimile: 212-858-1500

II.

Resources is an indirect, wholly-owned subsidiary of Public Service Enterprise Group Incorporated ("Group"). Group is headquartered in Newark, New Jersey. The principal subsidiary of Group is Public Service Electric & Gas Company which serves more than 5.5 million New Jersey residents with electricity, gas and energy alternatives.

III.

This docket involves matters related to the comprehensive restructuring of the electric service marketplace in Arizona. Resources is a direct stakeholder in the outcome of this restructuring process.

Through an intermediary trust, Resources owns the West Phoenix Power Plant (the "West Phoenix Plant"). The West Phoenix Plant is comprised of three combined cycle generating units. The West Phoenix Plant is presently under lease to Arizona Public Service Company ("APS") through June 24, 2001, with certain fair market rental and fair market purchase options thereafter. The West Phoenix Plant would be subject to divestment by APS in the event that APS were to elect Option No. 1 - Divestiture/Auction Methodology ("Option No. 1") – under Decision No. 60977 in this docket (the "June 22 Order"). Accordingly, Resources has a direct and substantial legal interest in these proceedings.

IV.

This application is being made out-of-time in these proceedings in that hearings have already occurred. Resources has been monitoring the proceedings but did not feel the need to intervene to protect its interests until the Arizona Corporation Commission vote on June 3 (as reported in the Global Power Report for June 12, 1998) to require APS, among others, to sell its generating stations if it wants 100% stranded cost recovery. The June 22 Order was docketed on June 22, 1998; Resources' counsel first received a copy of the June 22 Order on June 29, 1998. Preparation of this Application began immediately upon such receipt. Given the ramifications of Option No. 1 in particular, Resources has determined that only it can adequately represent its interests. Furthermore, unless Resources is permitted to intervene and participate fully, Resources may be bound or adversely affected by further orders in this docket without an opportunity to have its views heard and considered.

V.

Resources agrees to accept the record as it has developed to date in this docket. Resources has no reason to believe that its intervention will disrupt or delay these proceedings. Resources has good reasons for its delay in intervention in that Option No. 1 was, for it, an unexpected development in these proceedings. Resources agrees to limit its participation in these proceedings to matters affecting its interests as described in this Application.

VI.

WHEREFORE, for the foregoing reasons, Resources respectfully requests that the Arizona Corporation Commission permit it to intervene in this proceeding with full rights as a party in all stages of the proceeding as might be ordered by the Commission.

Respectfully submitted

PSEG RESOURCES INC.

Timothy Michael Toy

Timothy Michael Toy

Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, NY 10004-1490
Phone (212) 858-1000
Facsimile: 212-858-1500

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on official service list for RE-00000C-94-165.

Dated at New York City
this 1st day of July, 1998

Timothy Michael Toy

Timothy Michael Toy
Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, NY 10004-1490