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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE  
CHAIRMAN

BOB STUMP  
COMMISSIONER

BOB BURNS  
COMMISSIONER

TOM FORESE  
COMMISSIONER

ANDY TOBIN  
COMMISSIONER

11 **IN THE MATTER OF THE ) DOCKET NO. E-04204A-15-0142**  
12 **APPLICATION OF UNS ELECTRIC, )**  
13 **INC. FOR THE ESTABLISHMENT )**  
14 **OF JUST AND REASONABLE )**  
15 **RATES AND CHARGES DESIGNED ) EXPEDITED MOTION FOR**  
16 **TO REALIZE A REASONABLE ) EXPEDITED RESPONSES TO**  
17 **RATE OF RETURN ON THE FAIR ) DISCOVERY REQUESTS SERVED**  
18 **VALUE OF THE PROPERTIES OF ) UPON APS REGARDING EXPERT**  
19 **UNS ELECTRIC, INC. DEVOTED TO ) WITNESS TESTIMONY OF ASHLEY C.**  
20 **ITS OPERATIONS THROUGHOUT ) BROWN AND COREY WELCH**  
21 **THE STATE OF ARIZONA, AND )**  
22 **FOR RELATED APPROVALS. )**

19 The Alliance for Solar Choice (“TASC”), by and through its undersigned counsel, hereby  
20 makes its Expedited Motion for Expedited Responses to Discovery Requests Served upon APS  
21 Regarding Expert Witness Testimony of Ashley C. Brown and Corey Welch (the “Motion”). This  
22 Motion is being filed in accordance with A.A.C. R14-3-101(A) and (C), the Procedural Order  
23 issued by Judge Rodda on June 22, 2015 (the “Order”), and Ariz. R. Civ. P. 37(a). TASC hereby  
24 requests that Judge Rodda consider this Motion on an expedited basis and order that all discovery  
25 requests propounded upon Arizona Public Service Corporation (“APS”) in regards to expert  
26 witnesses Ashley C. Brown (“Brown”) and Corey Welch (“Welch”) be responded to within two  
27 (2) calendar days of service via electronic mail.  
28

1           **I.       Background.**

2           On February 23, 2016, APS filed its surrebuttal.<sup>1</sup> In its surrebuttal, APS listed for the first  
3 time both Brown and Welch as expert witnesses to testify at the upcoming hearing. This disclosure  
4 was supplemented by nearly 100-pages of newly introduced supporting materials. This disclosure  
5 was made for the first time a mere five business days prior to commencement of the hearing.  
6 Neither the identity of the expert witnesses nor the supporting materials had been previously  
7 disclosed to the other parties to this proceeding.

8           As a result of APS' last-second disclosure, TASC and all other parties had less than a week  
9 prior to the hearing to review the testimony and supporting materials, analyze the same, and  
10 develop a response to it. Accordingly, on February 29, 2016, TASC submitted a Motion to Strike  
11 the newly-introduced testimony and supporting materials. On March 1, 2016, Judge Rodda denied  
12 TASC's Motion to Strike. In so doing, Judge Rodda stated that TASC could conduct discovery of  
13 Brown and Welch and present a rebuttal witness on the final day of the hearing. Another  
14 concession Judge Rodda made was to schedule Welch's testimony for March 17, 2016, later in the  
15 hearing. Because Brown is only available on March 8, 2016, however, Judge Rodda permitted  
16 Brown to testify on that date.

17           Subsequently, TASC has been preparing and serving discovery upon APS in regards to  
18 Brown and Welch's testimony and supporting materials.

19           Currently, the Order permits APS to respond to any discovery requests within seven days  
20 of receipt of the discovery. *See* Order, 3: 17-22. As stated in further detail below, because the  
21 hearing has already commenced, a seven-day response window would result in prejudice to the  
22 parties propounding such discovery as the responses would not be received with sufficient time  
23 for the parties to use the same at the hearing. Accordingly, counsel for TASC contacted APS'  
24 counsel to request that it stipulate to an expedited discovery response deadline and asked for APS's  
25 commitment by 5:00 pm March 2, 2016. APS never fully committed to an expedited schedule,  
26 making this Motion necessary.

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<sup>1</sup> This surrebuttal deadline was adopted in an order dated February 19, 2016. The order moved the  
surrebuttal filing deadline from February 19, 2016, to February 23, 2016.

1           **II.     Analysis.**

2           “A trial court has broad discretion in ruling on disclosure and discovery matters . . . .”  
3 *Marquez v. Ortega*, 231 Ariz. 437, 441, ¶ 14, 296 P.3d 100, 104 (App. 2013). By waiting until a  
4 mere five days prior to trial to introduce wholly new witnesses and nearly one hundred pages of  
5 additional supporting materials, APS has failed to afford the other parties the same opportunity to  
6 prepare for the hearing. Undoubtedly, such tactics utilized by APS were intentional as APS  
7 scheduled two unidentified witnesses to present at the hearing and substantial time and effort was  
8 expended to prepare such lengthy and detailed testimony and supporting materials. Although  
9 discovery at this late stage will not relieve TASC and the other parties to this proceeding from the  
10 prejudice suffered by these last-minute disclosures, it could mitigate some of the prejudice inflicted  
11 upon them. Discovery will not be adequate to mitigate the full extent of the prejudice, however,  
12 responses still must be received in an expedited manner to reduce the prejudicial impacts.

13           If the seven-day response deadline established in the Order is applied to any discovery  
14 requests propounded upon APS, the responses will not be furnished in time sufficient to allow for  
15 the use and incorporation of such responses in cross-examination. Indeed, Brown is currently  
16 scheduled to testify on March 8, 2016. Even if APS were to respond to discovery requests served  
17 on March 2, 2016, the responses would not be due until March 9, 2016 – the day after Brown is  
18 scheduled to testify. In other words, maintaining a seven-day response deadline would not provide  
19 for any discovery whatsoever to be propounded regarding Brown’s testimony. Further, in the same  
20 scenario, such a response deadline would leave TASC with under two-weeks to analyze the  
21 responses from Welch, identify and prepare a rebuttal expert witness of its own, and develop a  
22 strategy for cross-examination, all while participating in the ongoing hearing.

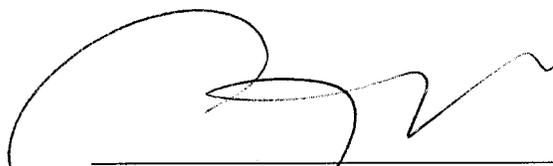
23           Instead, TASC requests a two (2) day response deadline to any discovery propounded upon  
24 APS regarding Brown and Welch’s testimony. Though still not ideal, this amended deadline would  
25 require APS to provide responses prior to Brown’s scheduled testimony on March 8<sup>th</sup> and provide  
26 even more much-needed time for TASC to prepare to cross-examine Welch and, as needed,  
27 identify and prepare a rebuttal witness.

1           Simply stated, APS has prejudiced TASC and all other parties hereto by waiting until the  
2 last possible moment to introduce wholly new expert witnesses and reams of new documentation  
3 into the record. TASC is now concerned that APS will use the seven-day response deadline to  
4 further prejudice TASC and the other parties hereto. To ensure that responses are not needlessly  
5 delayed, the response deadline in regards to discovery relating to the expert testimony of Brown  
6 and Welch should be set at three days from the date of receipt.

7           **III. Conclusion.**

8           For the reasons stated above, TASC requests that all discovery requests propounded upon  
9 Arizona Public Service Corporation (“APS”) in regards to expert witnesses Brown and Welch be  
10 responded to within two (2) days of service via electronic mail. A separate statement of moving  
11 counsel is attached hereto certifying that, after personal consultation and good faith efforts to do  
12 so, counsel have been unable to satisfactorily resolve the matter.

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14           Respectfully submitted this 3<sup>rd</sup> day of March, 2016.

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18           \_\_\_\_\_  
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1 **Original and 13 copies filed on**  
2 **this 3rd day of March, 2016 with:**

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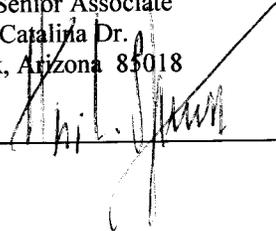
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