BEFORE THE ARIZONA CORPORATION COMMISSION

ARIZONA CORPORATION COMMISSION
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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
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COMMISSIONER

IN THE MATTER OF THE GENERIC PROCEEDING CONCERNING ELECTRIC RESTRUCTURING ISSUES.	DOCKET NO. E-00000A-02-0051
IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR A VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. R14-2-1606.	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 COMPETITION RULES COMPLIANCE DATES.	DOCKET NO. E-01933A-02-0069 **THIRD PROCEDURAL ORDER ON TRACK B ISSUES**

BY THE COMMISSION:

On June 20, 2002, a Procedural Order was issued in these matters setting initial procedural deadlines in this matter. The June 20, 2002 Procedural Order adopted the proposal of the Commission's Utilities Division Staff ("Staff") to hold workshops, and for Staff to work toward the preparation of a Staff Report on Track B issues. The Procedural Order stated that the balance of the procedural schedule was dependent upon the Commission's Decision on the Track A issues, upon any consensus reached by the parties during the workshops or otherwise, and upon the need for a hearing.

On September 10, 2002, the Commission issued Decision No. 65154 in these dockets. Decision No. 65154 ordered the parties to continue their efforts in Track B to develop a competitive solicitation process that can begin by March 1, 2003. Decision No. 65154 also ordered that upon

implementation of the outcome of Track B, APS and TEP "shall acquire, at a minimum, any required power that cannot be produced from its own existing assets, through the competitive procurement process as developed in the Track B proceeding" and that "[T]he minimum amount of power, the timing, and the form of procurement shall be determined in the Track B proceeding."

On September 16, 2002, Staff filed a Request for Procedural Order asking that a hearing date and associated procedural deadlines be set for the Track B issues. Staff proposed a hearing date of November 20, 2002 and associated procedural deadlines. On September 18, 2002, Arizona Public Service Company ("APS") filed a response to the Request expressing its support for Staff's proposed schedule. On September 20, 2002, Panda Gila River, L.P. ("Panda") filed a response supporting Staff's request for an evidentiary hearing and requesting a scheduling conference to allow all parties to comment on the procedural schedule and on the issues to be addressed at any hearing.

On September 24, 2002, the Second Procedural Order on Track B issues was issued, setting a date of October 1, 2002 for the parties to file their proposed procedural schedules and their lists of specific issues remaining to be addressed at hearing, and setting a procedural conference for October 2, 2002.

On October 1, 2002, APS, Tucson Electric Power Company ("TEP"), Panda, the Wellton-Mohawk Generating Facility ("Wellton-Mohawk")[1], Reliant Resources, Inc. ("Reliant"), the Land and Water Fund of the Rockies ("LAW Fund"), the Residential Utility Consumer Office ("RUCO") and Staff filed a list of the substantive issues they believe remain to be addressed at hearing. Also on October 1, 2002, APS, PGR, the LAW Fund, WMGF, Reliant, and Staff filed proposed procedural schedules.

The procedural conference was held as scheduled on October 2, 2002. Parties in attendance included APS; TEP; Panda; Reliant; Wellton-Mohawk; Sempra Energy Resources ("Sempra"); Southwestern Power Group II ("SWPG"); PPL Southwest Generation Holdings, LLC, PPL EnergyPlus, LLC and PPL Sundance Energy LLC, ("PPL"); Harquahala Generating Company ("Harquahala"); Arizona Competitive Power Alliance ("Alliance"); the Arizona Utility Investors

[1] Wellton-Mohawk includes Dome Valley Energy Partners, LLC, Wellton-Mohawk Irrigation and Drainage District, and Yuma County Water Users' Association.

Association ("AUIA"); the LAW Fund; RUCO; and Staff.

Proposed Procedural Schedules

APS, TEP and the LAW Fund continue to support Staff's schedule as proposed in its September 16, 2002 Request for Procedural Order. APS requests that to the extent the hearing date is extended, that the time for it to file testimony be extended accordingly. Harquahala supports the schedule proposed by Staff or a more aggressive schedule. Reliant and Wellton-Mohawk propose a more accelerated schedule with the hearing to begin during the week of November 11, 2002. RUCO believes that a two-week extension of the hearing and filing dates proposed by Staff would be reasonable. Sempra and SWPG believe that any schedule should allow time for the filing of more information by APS. Panda proposed an alternative schedule with a hearing to begin on December 16, 2002. Panda believes that a procedural schedule must be established to accommodate the submission of sufficient information for the Commission to make a "needs assessment" and "product determination" itself. Panda's proposed schedule therefore includes, in addition to Staff's proposed October 25, 2002 date for filing the Staff Report, a November 1, 2002 date for APS to file its Long-Term Resource Plan, Needs Assessment and product procurement proposal together with supporting testimony. Panda proposes November 22, 2002 for the filing of testimony addressing the Staff Report and the November 1, 2002 filing, and December 6, 2002 for Staff and APS to file responsive testimony.

Listed Issues

In its October 1, 2002 filing, Staff provided a list agreed upon at the workshops of remaining areas in dispute, which includes:

1. Unmet needs of APS
2. Price to beat
3. Commission approvals
4. Third-party solicitation manager/duties
5. Affiliate Code of Conduct
6. Least Cost Planning
7. Demand Side Management ("DSM") and Environmental Risk Mitigation process

The parties agreed that the above list broadly encompasses the remaining contested issues.

Staff's filing also included its own formulation of the issues as follows: 1) What portion of APS' load represents its unmet needs; 2) How Staff should determine and use "price to beat;" 3) Timing of Commission prudence evaluation of solicited contracts; 4) Who conducts solicitation (utilities or independent third party); 5) Standards of conduct governing utility-affiliate communications; 6) Whether a least-cost planning proceeding should be adopted by the Commission ; 7) Whether the Commission should initiate a proceeding to address DSM and Environmental Risk Mitigation.

RUCO listed: 1) Utilities' submission of bids reflecting self-build options on a regulated cost-of-service basis; 2) Least cost planning process for selecting winning bids, including delivered price, to include bids ranging from 1-30 years, to the exclusion of "price to beat" methodology; 3) Bid evaluation period.

The LAW Fund listed: 1) Management of Environmental Risk; 2) DSM; 3) Public input; 4) Reporting of environmental impacts; 5) Price to beat; 6) Risk management.

APS' statement of issues included: 1) APS' unmet needs, including treatment of local Reliability Must Run ("RMR") generation requirements; 2) Release to the utility of Staff's "price to beat" after bid evaluation but prior to contract acceptance by the utility, as well as certain aspects of the proposed implementation of this concept for multi-year deals or deals not having fixed prices; 3) Commission approval of the process and outcome, and the implementation of a cost-recovery mechanism; 4) Role of Staff and the monitor; 5) Bidder, utility and affiliate communication protocols.

TEP listed: 1) Amount of TEP contestable load; 2) Involvement of a utility's marketing employees in the competitive solicitation process; and 3) Arizona Independent Scheduling Administrator ("AISA").

Reliant listed four overarching topics including: 1) Determination of the utility's resource needs; 2) Identification of solicitation products; 3) Procurement process and methodology; and 4) Regulatory certainty of solicitation outcome.

Wellton-Mohawk listed: 1) Encouragement of long-term contracts if a public purpose would

be served; 2) Provision of criteria incentives for renewable energy; and 3) Contestability of RMR load.

Panda filed the agreed-upon list of issues as filed by Staff, but stated that two issues require clarification for purposes of determining a procedural schedule: 1) Clarification that APS' unmet needs for the next 3-5 years means the capacity and energy needs of APS to meet all its requirements that are not met by currently-owned APS generation operating in a manner consistent with past operations; 2) Clarification of third-party solicitation manager/duties to include needs assessment if the Commission does not determine the utilities' needs and products to be procured in this proceeding. Panda believes that APS must provide the information listed in Panda's proposed November 1, 2002 filing in order for the Commission to have the information necessary to determine "[T]he minimum amount of power, the timing, and the form of procurement shall be determined in the Track B proceeding" as required by Decision No. 65154. Panda states that the current solicitation proposal discussed in the workshops would require the submission of a resource plan and needs assessment after the Track B hearing, leaving the selection of the form of the ultimate procurement process to the purchasing utility.

Discussion

Several parties expressed concern with inclusion of Least Cost Planning issues and DSM and Environmental Risk Mitigation process issues in the competitive solicitation proceeding. The LAW Fund believes that DSM and Environmental Risk Mitigation issues should be considered in the structuring of future competitive solicitations, but is not recommending that DSM and Environmental Risk Mitigation be applied in the first solicitation. RUCO believes that the Least Cost Planning framework can fit within the Track B solicitation issues. We see no reason to exclude these issues from being addressed in pre-filed testimony in the Track B hearing.

Some parties objected to the issue of Arizona electric utilities' continued participation in the AISA being decided in this proceeding. They believe that inclusion of the AISA issues in the Track B proceeding would unnecessarily broaden the scope of the proceeding. Those parties pointed out that the issue of retail competition is a separate issue from the competitive solicitation process. Staff agreed that AISA issues require a determination, but that the determination should occur outside the

competitive solicitation process hearing. We agree with TEP that the AISA issues do require resolution in the near future, but do not believe that their resolution is necessary to achieve resolution of the more urgent competitive solicitation issues. A separate procedural order will be issued setting an early 2003 hearing date on the AISA docket.

Other than the issue of the utilities' continued participation in the AISA, the issues listed in the parties' filings are properly addressed in this proceeding.

APS objects to Panda's proposition that APS file its long-term resource plan, needs assessment, and product procurement proposal by November 1, 2002. APS prefers the current Staff workshop proposal that allows APS to finalize this information by the outside date of January 31, 2003 under the supervision of Staff and the third-party monitor, with the input of the parties. APS does not believe that a formal contested hearing is necessary to determine its contestable load. APS claimed that the information Panda proposes be submitted by November 1, 2002 could not be made available until the end of 2002.

The parties, including Staff, indicated that at the end of the last workshop, they were surprised by APS' indication that the capacity and energy figures used to estimate its energy needs, which had been used in the workshops throughout the summer, were not accurate. APS stated that it had informed the parties when it first provided the estimates that they were not accurate.

Reliant, Sempra, PPL, Harquahala, Wellton-Mohawk and the Alliance strongly support Panda's position that these figures require updating prior to the hearing. Reliant states that utilities are required to put out a forecast every year with their 10-year plan, and that a utility that is in the market buying power must monitor its loads and should therefore have forecasts readily available, with the understanding that a forecast is subject to change. Harquahala stated that the issue is not one of precision and currency of the load forecast, but the methodology, and would accept a forecast that APS has completed or updated slightly for purposes of this proceeding, with a finalized forecast to be used for the actual procurement to be finalized by January 31, 2002. PPL believes that utilities would have unmet needs and anticipated load information available as a matter of course and should be able to make them available with rough accuracy, along with a delineation of the forecast process used.

Staff verified that its current proposal, from the workshop process, would have the final

determination of the amount of power, the timing, and the form of procurement be in large measure at the discretion of the utility, with the independent monitor and Staff participating in the process. Staff believes that product definition should be made outside the hearing process, and that such a procedure meets the parameters of Decision No. 65154. Panda disagrees, and believes that for the initial solicitation, the utility should not have the discretion to decide what the procurement process is going to look like. Panda believes that Decision No. 65154 requires that the Commission make that determination.

Staff agreed that the parties should not have to wait until January 31, 2003 to learn the general boundaries of APS' needs assessment, and proposed holding an additional workshop for the parties to try to resolve the issue. Staff believes that holding an additional workshop would give the parties an opportunity to reach a greater level of consensus about APS' needs assessment and how APS develops its needs assessment, and that a workshop would be more productive than conducting discovery. APS stated that it could provide certain information prior to November 1, and would be willing to provide it for an additional workshop prior to October 25, 2002, but that it could not provide information/testimony on product determination, acquisition process, and a transmission deliverability study by that date.

The issues of the utilities' needs assessments and procurement proposals are issues central to the solicitation process. Whether the Commission determines that these issues must be finally determined within or outside of the hearing process, the facts to support such a determination should be made available to the parties prior to the hearing. The parties have been participating in workshops on the development of a solicitation process since May of this year, and should be on notice that such assessments and proposals are required. The provision of data supporting a parties' position on these issues should therefore not be problematic. Under the requirements of Decision No. 65154, the Commission must determine, in this proceeding, the minimum amount of power, the timing, and the form of procurement for APS and TEP to acquire, at a minimum, any required power that cannot be produced from its own existing assets through a competitive procurement process. Therefore, if the actual needs assessments and procurement proposals of TEP and APS are not going to be addressed in the Staff Report, then the parties should have access to the utilities' needs

IT IS FURTHER ORDERED that all parties shall provide to each party of record two copies of any work papers associated with their report/testimony concurrent with the filing of such report/testimony.

IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to pre-filed testimony shall be reduced to writing and filed no later than five days before the witness is scheduled to testify.

IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the pre-filed testimony of each of their witnesses and shall file each summary at least two working days before the witness is scheduled to testify.

IT IS FURTHER ORDERED that copies of summaries should be served upon the Presiding Officer, the Commissioners, and the Commissioners' aides as well as the parties of record.

IT IS FURTHER ORDERED that a **pre-hearing conference will be held on November 20, 2002 at 1:30 p.m.** for the purpose of scheduling witnesses[2] and the conduct of the hearing.

IT IS FURTHER ORDERED that any objections to any testimony or exhibits which have been pre-filed as of November 18, 2002, shall be made before or at the November 20, 2002 pre-hearing conference.

IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and regulations of the Commission, except that: **any objection to discovery requests shall be made within 5 days[3] of receipt and responses to discovery requests shall be made within 7 days of receipt**; the response time may be extended by mutual agreement of the parties involved if the request requires an extensive compilation effort.

IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel discovery, any party seeking discovery may telephonically contact the Commission's Hearing Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a request, a procedural hearing will be convened as soon as practicable; and that the party making such

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[2] There will be limited opportunity to schedule witnesses for dates certain, and the parties are put on notice to make their witnesses available November 21, 22, 25, 26 and 27.

[3] "Days" means calendar days.

assessments and procurement proposals directly from the utilities in time to allow the parties to respond in their testimony.

APS does not believe that a formal contested hearing is necessary to determine its contestable load. It is preferable that the issues of the utilities' needs assessments and procurement proposals be resolved in a workshop process, and reflected in the Staff Report, and we strongly encourage such a resolution. However, if these issues cannot be so resolved, the time constraints under which a decision must be made in this matter require that these issues be litigated.

IT IS THEREFORE ORDERED that the hearing on the Track B issues identified by the parties, as set forth herein, will commence on **November 21, 2002, at 9:30 a.m.** at the Commission's offices in Phoenix, Arizona.

IT IS FURTHER ORDERED that Staff shall file a Staff Report on the Track B issues identified by the parties, as set forth herein, by **noon on October 25, 2002**.

IT IS FURTHER ORDERED that APS shall file a needs assessment and procurement proposal, sufficient to inform the Commission in its determination of the minimum amount of power, the timing, and the form of procurement as required by Decision No. 65154, together with supporting testimony, by **noon on November 4, 2002**.

IT IS FURTHER ORDERED that TEP shall file a needs assessment and procurement proposal, sufficient to inform the Commission in its determination of the minimum amount of power, the timing, and the form of procurement as required by Decision No. 65154, together with supporting testimony, by **noon on November 4, 2002**.

IT IS FURTHER ORDERED that all parties shall file testimony and associated exhibits on the Track B issues identified by the parties, as set forth herein, including their response to the Staff Report and to the filings by APS and TEP, by **noon on November 12, 2002**.

IT IS FURTHER ORDERED that all parties, including Staff, shall file testimony and associated exhibits in response to the testimony filed, by **noon on November 18, 2002**.

IT IS FURTHER ORDERED that the Staff Report and all testimony filed shall include a table of contents that lists the issues discussed.

a request shall forthwith contact all other parties to advise them of the hearing date and shall at the hearing provide a statement confirming that the other parties were contacted.[4]

IT IS FURTHER ORDERED that Staff, APS, TEP, Panda, Reliant, Sempra, SWPG, PPL, Harquahala, Wellton-Mohawk and the Alliance shall work together to provide notice of these proceedings in such a way as to provide as full notice and opportunity for participation on the part of the public as possible. Staff, APS, TEP, Panda, Reliant, Sempra, SWPG PPL, Harquahala, Wellton-Mohawk and the Alliance shall docket evidence of such notice no later than November 8, 2002.

IT IS FURTHER ORDERED that any motions which are filed in this matter and which are not ruled upon by the Commission within 10 days of the filing date of the motion shall be deemed denied.

IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of the filing date of the motion.

IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date of the response.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the time periods specified herein shall not be extended pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order by subsequent Procedural Order.

DATED this 9th day of October, 2002.

TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

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[4] The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

Copies of the foregoing mailed/delivered this 9th day of October, 2002 to:

Service list for E-00000A-02-0051
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